(17)

AGREEMENT

Betwixt the

Present and the *Former* Government:

Or, a DISCOURSE of *This Monarchy*, whether *Elective* or *Hereditary*?

Also, of *Abdication*, *Vacancy*, *Interregnum*, *Present Possession of the Crown*, and the *Reputation of* the *Church of England*.

With an *Answer* to *Objections*, thence arising, against taking the *new Oath* of *Allegiance*.

For the Satisfaction of the *Scrupulous*.

By a Divine of the *Church of England*, the Author of a little Tract, entituled, *Obedience due to the Present King, notwithstanding our Oaths to the Former*. D. Hickwood

LICENS'D,

Sept. 24. 1689. *J. Fraser.*

LONDON,

Printed for *A. C.* and are to be sold by *Charles Yeo*, Bookseller in *Exon*, 1689.

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TO

TO THE READER.

Scruple is an Ague *of the Mind, it ſometimes ſhakes it, and ſometimes heats and diſturbs the* Brain: *If the* Matter *be unknown to the* Patient *and to* Doctors, *we are not certain of the* Cure; *and the leſs, if the* Stomach *be untoward, and the* Appetite *averſe to Medicine: in ſuch a Caſe, various Methods uſed to be tried, and Remedies preſcribed; but through* Ignorance *of the Cauſe, or ſome latent* Obſtruction, *Skill it ſelf, a long time is thrown away; at length perhaps a* vulgar *Medicine, given at a venture, hits the Diſtemper, and works the* Cure. *After many learned Doctors charitable Endeavours to deob-*

ſtruct and eaſe ſome good Mens Minds, that are ſhaken with Scruples about the new Oath *of Allegiance, hitherto in vain,* (if it be yet in vain); *though I cannot boaſt of my Skill, I make bold to trie a* new Practice *upon them. And I hope my good Reader hath the like Reverence and Value, for the worthy Perſons that yet labour under (may I call it) the Diſeaſe, and the ſame Zeal and Affection for the* Health *and Quiet of the Body* Politick, *that I my ſelf have, and doth join with me, while I do heartily (that which I fear Phyſicians ſeldom do) pray over my* Patients *for a Bleſſing from the Great* Phyſician.

CHAP.

CHAP. I.

An *Introduction* grounded in a general *Maxim.*

The general Maxim,

Unneceſſary Changes in Government are to be avoided as dangerous.

UPON any great *Revolution* it ſeems much the Concern of the New State, ſo to ſettle the Government, as may offer leaſt matter or occaſion of Diſcontent to the People, and conſequently to make as little Alteration in the former Maxims and Cuſtoms, (that is, in the old Conſtitution) as is poſſible, leſt the old *Leaven* ſhould work again to the prejudice of the new Eſtabliſhment.

We may obſerve in our own Hiſtory, that ſuch publick Grievances as from time to time have been objected by the People to the diſquieting, and ſometimes hazarding of the Government, have generally been aggravated with the charge of *Innovation*, as being contrary to our ancient Liberties, Rights and Cuſtoms; and for ſome Ages in Inſtances infringing *Magna Charta*, that great Record of the Subjects Priviledges, and Codex of our ancient and common Law, in which much of our old and happy Conſtitution conſiſts; indeed any Alteration in our Conſtitution ſeems to ſhake the Foundation, and frightens the People like an Earthquake.

This *Maxim* is commended by three great and well-known *Examples*.

1. Our *Saviour's*.

This Caution was ſanctified after a marvellous manner by the Wiſdom of God in our great *Exemplar*: Our bleſſed Saviour, we know, was ſent into the World to put the Church into a *new* frame; now in his ſo doing, did he reject all that was *old*, or leave out any thing that might be any way ſerviceable in the *new*? Is it not remarkable, that he did reſume and make uſe of as many of the old Materials as could poſſibly be accommodated to the Edification of the Goſpel-Church? Did he not take both the Sacraments, did he not collect the very Petitions of his Prayer out of the former Uſage, and alſude much in the new Government to be eſtabliſhed to that which he found in the old? Did he not preach and expound upon the Law of *Moſes*, and the ancient Prophets, and appeal for his Defence and Juſtification to their own Books? Indeed he ſeems to have left out nothing of the old Diſpenſation but what was inconſiſtent with the *new*, namely, that which was *typical* and expired in the Truth, and that which was purely *judicial*, and therefore ceaſed with the temporal Government of the Jews, which our Saviour was not then come to take upon him.

Now, was not all this Accommodation of our Saviour to *Moſes* wiſely as well as graciouſly contrived, that the People, for whoſe ſakes he was firſt ſent, might not be offended, or ſtartle and flie from him upon the Scandal of Innovation?

Yea, ſo tender was our Saviour of them in this Point, that during his whole Life, both he himſelf, and his Diſciples

ciples by his Commiſſion, addreſſed only to the Jewiſh Nation; that the greateſt Scandal by the *Call of the Gentiles* might be avoided, and they might ſtill appear to be God's peculiar People, while there was any the leaſt hopes of them.

According to their Lord's method and example, we afterwards find his *Apoſtles* in a great Council, held and decreed it as a neceſſary thing for ſome time to retain and to practiſe ſome *legal* Ceremonies, even after they were all really aboliſh'd in the Death of Chriſt, that if poſſible they might thus gain, that is, reconcile the ſtubborn People to the new Eſtabliſhment, or at leaſt, leave them without excuſe.

Afterwards, the fear that poſſeſſed the Chriſtian and believing Jews of too great Alteration to be made by the Goſpel, occaſion'd that ſober Advice we reade of in *Acts* 21. 20, 21, 23, 24. of the Church to St. *Paul*, *Thou ſeeſt, Brother, how many thouſands of Jews there are which believe, and they are all zealous of the Law: And they are informed of thee, that thou teacheſt all the Jews which are amongſt the Gentiles, to forſake* Moſes, *ſaying, That they ought not to circumciſe their Children, neither to walk after the Cuſtoms. Do therefore this that we ſay unto thee.——— that all may know that the Information againſt thee is nothing, i. e.* of no moment; *but that thou thy ſelf walkeſt orderly, and keepeſt the Law.*

2. *Of the Church of* England *in the* Reformation.

Upon this ground ſome have thought it a Point of commendable Prudence in the Church of *England*, that her *Reformation* at firſt, proceeded with ſo much Moderation, and no greater Alteration, either in the Service or Government of this Church; whereby ſhe quieted

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the Minds, and drew into her Communion ſo many of the moderate *Papiſts*, both in the Reign of *Edw. 6.* and in the beginning of Q. *Elizabeth*'s; and whereby, thro the wonderful Mercy of God, ſhe hath been ſo long preſerved, even in the midſt of her Enemies on both ſides. *Moderata durant.* And ſince that you have her candid Apology to this purpoſe in theſe words; 'Accordingly 'we find (ſaith her Preface before the Liturgy) that in 'the Reigns of ſeveral Princes ſince the Reformation, 'the Church upon juſt and weighty conſiderations hath 'yeilded to make ſuch Alterations in ſome particulars, 'as in their reſpective times were thought convenient: 'yet ſo, as that the main Body and Eſſentials of it (as 'well in the chief Materials, as in the Frame and Order 'thereof) have ſtill continued the ſame unto this day.

And we may remember, that when ſome furious Zealots for Popery made a *Commotion* and Rebellion in the time of King *Edward 6.* their pretence was, that there were great and intolerable *Alterations* in Religion; and that in their Wiſdom, the King and his Council thought it a proper courſe to allay their Heats, and to pacify and reduce them to Obedience, to let them know how ſmall and few the Alterations complained of were; and that their Service before in *Latin* was now made *Engliſh*, that they might underſtand it.

The *Reformation* in *England* was carried on without Affectation of *Novelty*, though it juſtly abandon'd the former Superſtitions and Idolatry.

3. *The Example of* William *called the* Conqueror.

This like Policy is obſervable in *William* the *firſt*: for though the Succeſs of his Arms, carried the Colours of a *Conqueror*; yet he ſeem'd unwilling to truſt wholly to

that

that Title: he ſhook all indeed, but endeavour'd too, that things might go back as they could, and ſettle more firmly upon the *old Baſis*. He therefore added to, or rather ſeconded his *Sword* with a Pretence of Right to the Crown; *Jure Hereditario vel Teſtimentario*; and then, afterwards, they ſay, he proceeded to accommodate the Adminiſtration of his Government to the *Humours* of the *Engliſh People*, and the ancient Rights and Cuſtoms; I mean ſo, as the time and preſent State of things would give way: ſo that whatever his Title was, he accounted the *Satisfaction* of his People the beſt Security to his quiet Government. Certainly ſomething he did to this purpoſe, ſince we find it diſputed by ſome learned Men, whether this *William* the *firſt*, was King by *Conqueſt* or *Compact*. *Petit. Brady*, and others.

Vid. Cron. Ecl. Lieth. Stld. 171. Fortesc. de Leg.

If the former *Maxim* be allowed, I may have leave to apply it to our preſent Eſtabliſhment, in two *Inferences*.

Firſt, Seeing, as we have heard, upon ſuch Revolution, a departing from the former Conſtitution (beyond what is neceſſary in the very reaſon of the change) is to be avoided as unſafe or dangerous; we hence ſeem to owe that *Charity*, yea that *Juſtice* and that *Honour* to thoſe great and wiſe Inſtruments in our late Revolution, as to preſume they have done it with *Prudence* agreeable to that great *Maxim*; that is, that at leaſt they intended not therein to depart farther from our former State, or to alter any of our allowed *Maxims* or *Cuſtoms*, that lie at the *bottom* of our ancient Conſtitution, as our *Common Law*; I mean, beyond ſuch Neceſſity, or beyond what hath been declared by the King and Parliament.

For

For if any thing contrary or diſſonant to our Rule was diſcours'd in ſome *previous* Debates before the Settlement was made, and all ſuch Debates were determined in the Law; I ſay, if any ſuch things then happen'd, they ought not now to be remembred or mention'd as other than the motion of particular and private Perſons; and by no Rule can they be thought to paſs into, or any way affect the *Publique State*, as 'tis now ſettled by Laws excluſive of them.

Again, If any thing ſhould yet be thought doubtful in the Laws or Method of our preſent Eſtabliſhment, methinks by the help of the ſame Rule, all ſuch Doubts may be ſpeedily reſolv'd; I mean by an Interpretation favourable of our *former State*.

Eſpecially if it be ſeriouſly weighed, how far ſuch a ſenſe may contribute to the Quiet of the Minds of a Multitude of Men among us, that perhaps are too fond of old, and averſe to new things.

But principally, for the ſaving of the Wiſdom and Honour of our Governors; and the better ſecuring the Government, upon a *tried Baſis*; and the more firmly rivetting it in the Affections and Satisfactions of the Generality of the Kingdom.

This is conſiderable, when Unanimity and Unity by ſuch Satisfaction, cannot but be thought at leaſt expedient for our common Preſervation from the ſubtile Deſigns and threatning Attempts of our Enemies.

Pardon me if I make bold to demand, why the *general Senſe* of Publique Danger by means of the Offence ſo many take from the diſagreeableneſs of too ſtrict an Interpretation of ſome doubtful Words and Practices, touching our preſent Settlement from our former; why may not, I ſay, ſo general a Senſe and Fear in the People, who were *repreſented* in the Settlement, be mo-

deſtly

deſtly thought to have ſome Right to reconcile ſuch Doubts (if ſuch are left and not fully cleared by our Law-Makers) to a Senſe more agreeable to our former Conſtitution, and as near as may be.

At leaſt, where the Law is not expreſs, it cannot in reaſon be interpreted by private Perſons to ſuch a ſenſe as is counter to general Satisfaction, and the Publique Safety, both of the King and Kingdom; and this we have heard is hazarded by forſaking the old beyond neceſſity; and laying too much Streſs upon a new Foundation. We ought to be wary of wreſting words or things that ſeem doubtful, eſpecially about Government, to ſuch ill *Conſequences*, as the cheriſhing Faction, the Diſturbance of Loyalty, the Reproach of our Rulers, the Scandal of the Law, and the unſetling of the new Eſtabliſhment, wherein all our civil and religious Intereſts are undoubtedly concern'd.

Secondly, From the Premiſes I muſt infer, that an *Eſſay* to reconcile our preſent State with the former, is at leaſt *pardonable*, if not reaſonable and expedient, not to ſay neceſſary.

Here I am incouraged to lay the ground of my *Apology*, for this bold Adventure, and I hope no peaceable or good Man will be offended, much leſs any of our *Rulers* be provoked, with a modeſt and well-meant Endeavour to prevent much harm, and to do a great deal of good in my opinion. If I am miſtaken, *humanum eſt*; but I am ſure I intend well, and purſue a good Intention *ſincerely* according to my own Apprehenſion: This ſatisfies my ſelf, and methinks it ſhould offend no body.

But I muſt ſpeak plain; For if *unneceſſary* Alterations in the Frame of Government be indeed dangerous, and

we find an evil Surmiſe and groundleſs Suſpition hereof with reſpect to our late Revolution, already fermenting among us, and ſpreading the ſowrneſs of Diſſatisfaction, Diſcontent, and (I fear) Faction, over too great a part of the Nation, and prevailing ſo far, as to diſhearten our Friends, to animate our Foes, to increaſe our Fears, to continue our Troubles, and almoſt ſhake the Eſtabliſhment.

If matters are thus with us, I muſt have leave to ſay that a Man can hardly do better Service to the *Publique* at this ſeaſon, than by endeavouring to remove ſuch Popular Miſtakes about the Method of our preſent Settlement, and the nature of the Government, as ſeem to have ſuch malevolent Influences, and unhappy Effects.

Now I conceive this is to be done in a good meaſure, by ſhewing that the Alterations from our *former* State made in the preſent Government, are not ſo great or many as our diſcontented Men imagine, and our Enemies ſuggeſt. But if it be made evident, that in a fair and charitable *Conſtruction* of things, we ſtand firm upon the ſame Baſis we ever did; and that the Conſtitution of the Kingdom founded in our *ancient Maxims and Cuſtoms*, with reſpect to our Government, is not alter'd or touch'd by the late Revolution; I ſay, if this can be effected, I am apt to think many doubting and *ſcrupulous* Perſons among us, may be ſatisfied, and happily reconciled to a better opinion of the preſent Government, and a more cheerful Submiſſion to it.

If I knew any better Argument to juſtify our *Rulers*, to vindicate the *Government*, to eſtabliſh the Kingdom in Peace and Safety, and to defeat the Deſigns and Forces of our *Enemies (who live and are mighty)* than this before us, I would certainly uſe it the beſt I could; but I have no better, therefore I crave Acceptance of this my *Apology*, and Leave to adventure upon my Task.

CHAP.

CHAP. II.

The Chief Maxims *insisted upon as prejudiced by the late Settlement.*

IT may run in the Minds of some scrupulous Persons, that there are old *Maxims* that lie at the Root or *Foundation* of the Kingdom of *England*; and that these are destroyed, or subverted by the new Model; and consequently the Constitution of the Government is quite alter'd.

Those old Maxims may be thought to be such as these.

1. That the Government in *England* is *Hereditary*.
2. That it admits not of an *Interregnum*.
3. That nothing binds the People of *England*, but *an Act of Parliament*.

Now perhaps 'tis thought that the Government is now made *Elective*, and therefore is not *Hereditary*.

Again, that it having been declared, that by the late King's *Abdication* there was a *Vacancy* in the *Throne*, therefore an *Interregnum* was admitted.

Lastly, that this new Change was made by a *Convention*, and not by a *Legal Parliament*, and therefore we are not bound to own it.

Such kind of Suggestions as these, I fear have created Shyness and Aversion in many good Men from a due *Recognition* of the present Government; if we can make it appear, that in truth they are vain and groundless, I hope all good Men will be easily entreated to lay

aſide that Averſion, and be ſweetned to a better Compliance, both for the Sake of the *Publique*, and their *own*.

We proceed to conſider every one of them in order, and the ſeveral *Grounds* or Reaſons they ſeem built upon, and whence they are alledged and objected.

CHAP. III.

The Government, whether Elective *or* Hereditary, *and how.*

IT may be thought by ſome, that by the late *Change*, the Government is made *Elective*, and therefore is altered, and is no longer *Hereditary*, as it was before.

The Vanity of this Argument appears, if we make good theſe two Propoſitions.

1*ſt*. Our Government was never ſo abſolutely *Hereditary* as to exclude *Election* in all reſpects.

2*dly*. In our late Settlement, there was nothing done in Prejudice of our *Hereditary Government*.

Prop. 1. The firſt of theſe Propoſitions, *viz. That our Government was never ſo abſolutely* Hereditary, *as to exclude Elections in all reſpects*, appears,

Firſt, Becauſe all along in our *Hiſtories*, we find the Words [*Election* and *Elected*] uſed as previous to the Crowning of our *Ancient Kings*.

Some of them came to the *Crown* without any Colour of Title. Some, though not next in Blood, by the *Nomination* of the laſt King. Some only as being *next in Blood*, without ſuch Nomination. And laſtly, Some both by *Proximity* of Blood, and by the Nomination or *Teſtament* of the Predeceſſor. Now

Now if in Hiſtory all theſe are ſaid to be *elected*, certainly we have no reaſon to be offended with the *Word*, or imagine that our Government abhors all kind of *Election*.

But this is plainly acknowledged by the induſtrious Dr. *Bradie*, while he is in purſuit of the *Hereditary* Succeſſion; the *Saxon* Expreſſion, ſaith he, concerning *Succeſſion* and the *Succeſſor*, is always the ſame, *Feng to Rice*, render'd uſually *ſucceſſit*, *Electus eſt*, he took poſſeſſion of the Kingdom, he ſucceeded, he was choſen, *&c. Hiſt. of Succeſſ. p.* 366.

Edgar left his Son Heir of the Kingdom, and the great Men choſe him (*elegerunt*) as his Father commanded. *Harold*, *Henry* 1. and K. *Stephen* obtained the Crown (they ſay) by fraud and Violence; yet by ſeveral old Monks are ſaid to be elected.

They ſaid ſome of our Kings that had undoubted *hereditary* Titles, were elected, ſo K. *Henry* 2. *ab omnibus electus*; ſo likewiſe K. *John* and *Richard* 3. are ſaid to be choſen, as he obſerves in his parallel, *p.* 412. *Brad. Gloſs.* p. 38.

But to do the Doctor Right, I confeſs he contends earneſtly, that however the words were uſed in ſuch caſes, indeed there was no ſuch thing as *Election* or proper Election of any of thoſe Kings; and that Election ſignified only *Recognition*, Applauſe or Proclamation, and ſometimes only a forc'd Submiſſion; at leaſt they were never choſen by the Community of the People, as they are now underſtood, but by the great Men of the Kingdom.

But that Controverſy I leave betwixt the Doctor and his Adverſaries; obſerving only for my preſent purpoſe, that our ancient Kings, both *Saxons* and *Normans*, are in the Chronicles of *England* frequently ſaid to have been choſen or elected.

So

So much for the Word: and now with the Peace of the Ingenuous and laborious Man lately mention'd, I would modeſtly enquire whether we find not ſome ſtroaks in our Hiſtory of a *real Election* of our Kings in ſome Inſtances at leaſt, ſo far as to interrupt the ſtrict Opinion of hereditary Succeſſion. And here I have no need to aſſert the Election of the People, or go off from the Doctor's own ground or conceſſion, either about the ancient Practice, or the declared Judgment of the Kingdom.

1. In the Saxons time, the Doctor ſaith, he hath diſcovered a ſure Rule of *Succeſſion*; but this was double, either Right of *Blood*, or the *Nomination* of the preceding King; 'tis confeſs'd then that Right of Blood was not the only Rule: hence he lays down his ordinary diſtinction of *Jus Hereditarium* and *Jus Teſtamentarium*; yea he tells us, that the Teſtamentary Heir, that is, one that comes to the Crown by the laſt King's *Will*, tho not next in Blood, is ſaid to inherit.

But to apply this diſtinction, methinks it doth two great things; it firſt, plainly yields the Cauſe ſo far, as to the neceſſary deſcent of the Crown in Proximity of Blood: Secondly, It gives a ſhadow at leaſt of *Election*, if not in the People, yet in the King, if by his *laſt Will* he might paſs by the next in Blood, and name (that is, properly to chuſe) another to ſucceed him in the Throne. Beſides, if this was anciently done, both frequently and lawfully, where ſhall we found *hereditary* Government in the ſtrict ſenſe of it in the Conſtitution of the Kingdom? or how ſhall we defend it from being in no wiſe *elective*?

Yea, if the King himſelf upon ſome conſiderations might chuſe his *Succeſſor*, and ſet aſide the next in Blood, without wronging him, certainly upon great Conſidera-

tions,

tions, the like may be done by both the King and People. And we find that Teſtamentary Heirs of the Crown, tho they were indeed *named* by the King, are ſaid to be *choſen* by the People, and yet are alſo ſaid to *inherit*; and if we obſerve it narrowly, we ſhall eaſily note, that the words *Hereditary* and *Elective*, with reſpect to the Government, are ſome-times confounded in *Hiſtory*; *Succeſſione Hæreditariâ eligere*, was no contradiction. The Teſtament of *Ethelwoph*, *Florence* of *Worceſter* calls it *Epiſtola Hæreditaria*; by which it is ſaid, he ſet aſide his own two Sons, as the Doctor notes, *p.* 363. where he tells us moreover, what the Law of *Succeſſion*, as well as the *Practice* then, was; the *Saxon Kings*, ſaith he, *might appoint a Brother's Son*, or a *Baſtard*, to ſucceed them, before their own *lawful Iſſue*.

But to come a little cloſer: I may demand where, when, or how this Maxim [that the Crown of *England* is neceſſarily annex'd to Proximity of Blood in the Royal Family] came to be of the Foundation or *Conſtitution* of our Government? That it was never made ſo by *Cuſtom*, or any other Law, or by any other means, the learned Doctor yields us, by his Refuge in a *Teſtamentary* Heir.

I am aſſured under the hand of a very learned Lawyer, who is a great Friend of the *Hereditary Monarchy*, that this Maxim (in contradiction to the former) [the *Crown* was *alienable* and *deviſable*] was retained, and never contradicted until the *Reſignation* of K. *John*: and ſince that time how hath it been contradicted or denied either in practice, or the declared Judgment of the Kingdom? It is evident enough what the ſenſe of the King and Parliament was in *Henry* 8*th's* time, and ſince in Queen *Elizabeth's*, and ſince that in our late *Parliaments*.

And nothing to the contrary can I think be fairly inferr'd, either from that Act of 7 *Hen.* 4. that limited the

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Succeſſion of the Crown to his Sons in order, and their Iſſue; or that of *Hen.* 7. that limited to the Heirs male of his Body, and no farther: Or the Recognition of K. *James* the firſt: for by that of *Hen.* 7. it is plain the Parliament thought they had power to limit the Succeſſion, otherwiſe they would not have meddled with it; beſides they limited it indeed, by extending it only to the Iſſue male of his own Body. And as for the Recognition made to K. *James*, it ſeems to be the cleareſt and fulleſt acknowledgment of an *hereditary* Succeſſion, yet we may obſerve how it is expreſſed; 'tis indeed declared, that the *Imperial Crown* did belong to him and his *Royal Progeny* and Poſterity for ever; but 'tis not ſaid of *neceſſity*, notwithſtanding any Reaſon to the contrary, it ſhall *actually* deſcend to the next in Blood, in order for ever. Beſides, they ſay in the ſame *Act*, that this their Recognition could not be perfect, or remain to Poſterity without the *King's Conſent*, that is, to make it an Act of Parliament. And doth not that imply, that *hereditary Succeſſion* of the Crown was not accounted to be fundamental to our Government before? For then it would have been perfect in it ſelf, without the King's Conſent. Beſides, it ſeems evidently to follow, that the Kingdom at that time, judg'd that the Succeſſion of the Crown was *limitable* by Act of Parliament.

Yet leſt after all this I ſhould be miſtaken, I make this obſervable from our own Hiſtories, that tho ſometimes the next in Blood hath been ſet aſide, and for ought I find to the contrary, upon Reaſons of State may be ſo again, yet it ſeems the *Royal Family* have *Jus ad Rem*, and have Right thereunto before any other, if any Member of the Royal Family are capable of Government: ſo I think we find it generally carried; that is, when the next in Blood hath been omitted, generally, ſome one either

either *really* or in *pretence* of the Royal Family, hath been advanced to the Throne.

This general Right to the Crown by Blood, hath been ſometimes pleaded by our Kings, and allowed by the People and Parliaments, but never denied: and tho we cannot ſay, the next in Blood hath an uncontroulable and immediate Right beyond all exception, to enjoy the Crown; tho we cannot find this Right in the conſtant uſage as *Common Law*, and a Fundamental of our Government, yet we may grant that in all Turns and Temptations to the contrary, the Right of the Royal Family ſeems to have countenance, if not plain and general Acknowledgment, and to paſs unqueſtionable with the ſilent Teſtimony of many Ages.

I am ſorry to obſerve with *Daniel*, that (before this laſt Age) ſeldom or never the *third Heir* in a right Deſcent, enjoyed the Crown of *England*. *In* Vit. Hen. 1.

It cannot be denied, but that our *Parliaments* have frequently concern'd themſelves about the *Succeſſion*; and that our Kings, both ſuch as came to the Crown by *proximity* of Blood, as well as thoſe that came to it otherwiſe, have often applied themſelves to the *Parliament*, not only for their own Security, but to limit and qualify the Succeſſion after them.

Yea further I think it muſt be granted (as one ſaith ſmartly enough) 'That 'tis a moſt dangerous thing to have 'an Opinion prevail, that the King in concurrence with 'his *Parliament*, ſhould not have power to change the 'direct Order of *Succeſſion*, though the Preſervation of 'him and his People did depend upon it.

Yet after all this, if *Common Uſage be Common Law*, and continued Practice be our Rule of determining this great Point, I think the Royal Family have a *radical* Right in the Government of *England*; and bids fair for an In- *Right in the Royal Family.*

tereſt in the Conſtitution of the Kingdom; for it ſeems to have governed the Diſpoſition of the Crown all along, both before, as well as ſince *William* the firſt; and that, generally, with our ſeveral Kings and Parliaments, ever ſince we had any.

I ſhall leave this eaſy Obſervation, only take notice of *two* Conceſſions, which I apprehend conſiderable: The firſt is that of Dr. *Br.* he ſaith, the *Saxon* Kings might appoint a *Brother's Son* or a *Baſtard* (he doth not ſay, any other Perſon, or any one out of the Royal Family) before their own *lawful Iſſue*, to ſucceed them in the Throne, *p.* 363. *Succeſſion of the Crown.*

The other is of *Hubert A. C.* at the *Coronation* of K. *John*, he declares indeed that the King ought to be *elected* by the *People* (perhaps a new Doctrine to many that heard it) yet he qualifies that *Election*, and tells them, that if any one of the *Race* of the late King was more deſerving than others, the People ought (*promtus & promptius*) more readily conſent to his Election.

Now if the Deſcent of the Crown ought to be kept within the bounds of the *Royal Family*, Is not this ſufficient to conſtitute an *hereditary* Monarchy, in a true ſenſe, tho with the former latitude? Was it ever thought eſſential to an *Inheritance*, to paſs uncontroulably without any exception to the firſt in Blood? Is it not enough for the nature of an Inheritance to be granted to *me and my Heirs?* And may not Cuſtom diſpoſe it to the *younger* as well as the *elder?* Hath not the *Parent* liberty to give it to whom he will? Yea, is it conſiſtent with a Fee-ſimple to be *unalienable?* or with *Salus Populi*, in all poſſible Caſes, for the *Crown* to be ſo? eſpecially in our own Kingdom, where frequent *Practice* ſeems to have eſtabliſhed as the *Common Law* of the Crown in all Ages, that upon urgent Reaſons for the ſafety of the Kingdom, the Inhe-

Inheritance is *alienable* from the next in Blood. Nay, I muſt preſume, that tho upon ſome extraordinary Revolution, and ſome abſolutely neceſſary Reaſon of State for our common Preſervation, a *Stranger* ſhould be advanced to the Throne, for one or more turns, while that neceſſity continues; I preſume, I ſay, if when the Reaſon of that *Violence* is removed, if care be taken to have the Crown reſtored to the Royal Family, or any of its Branches, capable of it, the *Hereditariness* is not thereby extinct, or the Conſtitution of the Government altered, things may then run again in the *old Channel*, and ſettle upon their old Bottom.

And ſince we are gone ſo far, may I not without Offence advance one ſtep farther?

Is there no Priviledg by *Primogeniture*? Doth not Nature and the general courſe of Inheritances, where there is no ſpecial Reſervation or Exception, point out the *next Heir* for the Poſſeſſion? Yea, is there not very much to be found in our *Chronicles*, and Laws, and actual Succeſſion of the Crown, in favour of the *next Heir* by proximity of Blood? Can we find by our moſt diligent ſearch of our publick Records, that ever the next in Blood was ſet aſide, without ſome Reaſon or pretence of Reaſon? which very thing ſeems to allow his Right, whilſt it alledges ſomething againſt his Poſſeſſion. Whence we may conclude, that tho for ſufficient reaſons the next in Blood may be ſet aſide, yet without ſuch reaſons it ſeems neither juſt nor fit that he ſhould. *Next Heir.*

The Royal Family have a Right in *Actu primo*; the next Heir ſeems to have it in *Actu ſecundo*; namely, a *Jus in re*, and as much a *Right* as can be conceived, ſhort of *Poſſeſſion*, if nothing can be *juſtly* objected againſt it from his *Unfitneſs* for the Government. Immediately upon the Deceaſe of the *Queen* (ſaith the *Parliament*

liament in their Recognition of King *James* the firſt) the *Imperial Crown did by inherent Birth-right*, deſcend to you *the next Heir* of the Blood Royal.

Thus the *Royal Birth-right* hath the Acknowledgment of the whole Kingdom, or the *whole Body of the Realm, and every particular Member thereof*, as the Words of the Statute are; and this Birthright hath been often claimed, and often *fruſtrated*, but I think never denied, or ſo much as queſtioned.

Prop. 2. *There was nothing done in Prejudice of our Hereditary Monarchy, by our late Settlement.*

This is the other Propoſition I undertook to make good in defence of our preſent Government; and reflecting upon what we have lately diſcours'd, we are neceſſitated to take notice of, and to ſet our ſelves to anſwer a very conſiderable Objection thence ariſing, as ſome ſtrongly fanſy.

Obj. Hence we are faln upon the great *Objection*; 'Tis thus, If the *Right* of the Crown be *inherent* in the *next* in Blood by *Birth-right*, why upon the *Demiſe* of the late King, did not the Government devolve on his Daughter the *Princeſs of Orange*? By preferring the *Prince of Orange* before the Princeſs, whoſe right it was, ſeems not agreeable to an *Hereditary Monarchy*, and ſo makes the Government *Elective*.

Anſw. I hope there are already ſufficient Grounds laid for an Anſwer hereunto: All that I have to do is to apply them in a few plain *Propoſitions*.

1. We have found reaſon to diſtinguiſh thus; The *Crown* may be thought *alienable*, either *abſolutely*, or in a qualified ſenſe; that is, ſuch a ſenſe as is conſiſtent with its being *Hereditary*.

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2. One may think that the Crown is not abſolutely at the Peoples Diſpoſal; in our (or in any) Caſe, or *alienable* upon any Occaſion, or to any Perſon; and yet may conceive that upon plain neceſſity, created by *Salus Populi* the Supream Law, and the very end of Government, the Crown may be alienated from the *next in Blood*, to the ſecond; and upon the like reaſon to the third.

3. 'Tis further evident to me, That a Man of that Perſwaſion may yet judg that the *next in Blood* that is capable of the Government, may of *Right*, and by the Law of *Inheritance* claim the Crown, which without Injuſtice cannot be denied him.

4. It hence followeth, That the Supream Power upon the Demiſe of the late King, did not devolve upon the *People*, nor imediately upon the *Prince* of *Orange*, but upon his *Princeſs*. Upon theſe grounds indeed it muſt be granted that the *Princeſs* ſhould have been Queen as Queen *Mary* was, that is, in the place of the *King*; and next to her, the Princeſs of *Denmark*, unleſs ſome very great Reaſon of *State* will juſtifie the preferring the *Prince*, who is not next in Blood, before them both.

5. Doubtleſs thoſe whom we intruſted to manage and methodize our Settlement, ſaw, as they judged, *unanſwerable* Reaſons to advance the *third* in order, before the *firſt* and *ſecond*, and methinks that ſhould ſatisfie us.

6. But moreover we are morally aſſured that both thoſe noble *Princeſſes* were themſelves ſatisfied of the Reaſon of it; yea, that both of them conſented, yea deſired the Crown might be ſettled in the order as it is.

7. And may it not be very reaſonably granted, that ſome great Conſiderations (though we know not what they were) might move them *cedere de jure ſuo*, to wave their

their own Right, and these such as might warrant and justify their so doing?

8. Yea, if there be such a thing as *Abdication* of Government, did not both those noble *Princesses* expressly, and not only by Implication, so far abdicate the Government, if they actually and voluntarily so far refus'd it?

Obj. But had not the Prince of *Denmark* some kind of Right in and by his Lady?

Sol. It seems to me he had; but it is very evident that he consented and waved what Right he might have, as both the *Princesses* did theirs.

Obj. But the People of *England* seem to have a right to be governed by the *next in Blood* of the Royal Family.

Answ. This too may be granted: but the People of *England* in this sense, are the Lords, and the Representative Body of the *Commons*; and have not these both consented to, and transacted the present Establishment for themselves and us?

To conclude this, Upon the late *Demise*, nothing could bar the Prince of *Orange* from a just and immediate Title to the Crown of *England*, but the Right of his Princess, the Right of the Princess, and in and by her of the Prince of *Denmark*, and the Right of the Nation in these; but all these Bars are fairly removed by the Consent and Desire of all Parties concern'd, and none have left them any cause to complain in that respect.

Now I hope here is nothing done destructive of the *Hereditary Monarchy*, nothing that can infer the Government to be *Elective* purely in the whole Transactions; much less so great an Alteration in the nature of our Government for the future. What Principles some went upon in our late Change, we need not guess, so long as we find nothing evident, either *verbal* by Declaration of our Governours, or by any thing in the Change it self, but

but what is fairly reconcileable to our ancient *Conſtitution*; we may, without troubling our ſelves with other Mens Principles, cheerfully ſubmit to the preſent Government, if we have no more to object, but that the Nature of the Government is altered by the Revolution. An evil Surmiſe without ground, ought to be laid aſide.

CHAP IV.

Of Vacancy, *and the ſuppoſed* Interregnum *thereupon, by the late King's* Abdication.

WE are thus led to the ſecond great Exception, which is this, It is delared by the *Lords and Commons* in the Convention, that the *late K. James the Second having abdicated the Government*, the Throne thereby was vacant; conſequently an *Interregnum* was admitted or ſuppoſed, contrary to the ancient and known Maxim, That in *the Government of this Kingdom there is no Interregnum.*

For Anſwer hereunto, I hold my ſelf obliged to do two things: firſt, to conſider how and in what ſenſe the late King *abdicated* the Government; this may juſtify the *filling* the Throne with the the preſent King and Queen. *2dly.* To ſhew that there hath been nothing ſaid or done by the *Convention*, as ſuch, that hath declared a *Vacancy* in the Throne in that full and *abſolute* ſenſe, as might infer an *Interregnum* in the true meaning of the Word. And thus the *preſent Government* will be vindicated and reconciled with the *ancient*, and this great Exception I hope fully ſatisfied: and this methinks I am ſtrictly tied to, by my laſt Diſcourſe of *Hereditary Monarchy*, as will preſently appear more plainly.

CHAP.

CHAP. V.

Of ABDICATION.

FOR the first, That the late King did really *abdicate* the Government, hath been so fully spoken to by others, that I need not much labour in the Proof of it. My chief Intention is to reconcile the Word to the Notion of my Brethren that are so much offended with it.

1. I desire them to consider, it is a *Law-term*, and but seldom used amongst us; why should we not take the Signification of it from the Learned in that Faculty?

2. But 'tis of greater Weight, that the *Lords and Commons* differing about this Word at their *Conferences*, such a sense was beaten out, after much Debate and Argument, upon the very same grounds upon which many seem now offended with it, that the Wisdom of the Nation in *both Houses* acquiesced in this word, as the fittest for the purpose. By our *Election* we intrust them with all we have, and cannot we trust them with a Word?

3. That which seem'd to reconcile the *two Houses* in the word *Abdicate*, was not the critical notions of the *Civilians*, but the Explication of what was then to be meant by it, which I am told was happily effected by one (who is a Wonder in the learning of the Law) in these or the like Words, in which before they were agreed.

'That King *James* the 2*d.* by going about to subvert the '*Constitution*, by breaking the Original *Contract* between King 'and People, and by violating the *Fundamental* Laws, and '*withdrawing* himself out of the Kingdom, has thereby *renounced* 'to be a King, according to the Constitution, by avowing to 'govern by a Despotick Power unknown to the *Constitution* at 'his *Coronation*; such a King to whom the *Allegiance* of an 'English Subject is due: and has set up another kind of Domi-'nation, which is to all intents an *Abdication*, or abandoning his 'Legal Title, as fully, as if he had done it by expres Words.

Now if these things were true, as no body I think can deny, and amount to an *Abdication* in the just, and publickly owned

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and explained ſenſe of the Word, how is it poſſible we ſhould any longer ſcruple about it.

Obj. The Meaning of it then is, that King *James* thus ceas'd to be King, but this is doubted.

Sol. But the Body of the *Kingdom* ſay he did; and you will not ſay but 'tis poſſible: for a King may ceaſe to be ſo, by a *voluntary Reſignation* in Word or Writing, which is formal Abdication; or, as *Grotius* ſeems to expound the Word, by *manifeſte habere pro derelicto*.

2. Now if the late King did as much by his *Actions* as an expreſs Abdication amounts to, did he not virtually and as really relinquiſh or abdicate the Government, as if he had in ſo many Words renounced it?

3. And that he did ſo, is too evident by what is before alledg'd againſt him, eſpecially if we add his putting down the *ancient Defence* of the Kingdom, the *Militia*, and beginning to rule and defend his Arbitrary Government by an *illegal ſtanding* Army; if when he voluntarily departed from us, he diſmiſſed his Judges, threw away the Broad-Seal, and diſbanded and let looſe upon us his illegal Forces, and left us in a perfect *Anarchy*; as was then apprehended, even by ſuch as now are offended with the Word *Abdication*.

The Caution of the *Convention*, to avoid all colour of Offence, ſeems admirable. If they had ſaid the late King had forfeited the Crown, that would certainly have more offended you; and if they had depoſed him, much more: theſe are both avoided, and 'tis only ſaid he *abdicated* the Government; they do not only ſay it was his own Fault, but his own *Act*.

Obj. But thus we make him *Felo de ſe*.

Sol. This ſeems to be no hard ſaying. 'Tis plain, though the King in his perſonal or natural Capacity cannot, as you think, forfeit his Life, yet he may *die* or *kill* himſelf: So in his politick Capacity, if we grant that the King cannot forfeit his Government by male Adminiſtration, yet 'tis poſſible he may extinguiſh and deſtroy it, and that by a real as well as by a formal Abdication, as before explain'd. Government *according to Law*, is *eſſential* to our Government, otherwiſe our Lawyers are much out, that generally tell us our Government is a *Legal*, *Regal*, or as *Forteſcue*, a *Political* Government, in oppoſition to Deſpotical, Abſolute, Arbitrary or Tyrannical Govern-

ment. Now though a King do not intend absolutely to abandon all kind of Government, yet when he leaves the proper Government, and assumes another kind of Government abhor'd by our Constitution, he plainly ceaseth to be our Governour in any sense; he refuseth to govern politically; he would bring in another Species of Government that is destructive of our Constitution; and begins in many odious instances, the Execution of *Tyranny*, contrary, not only to the Laws that make and limit our Government, but contrary to the ends of all Government; and instead of protecting, destroys his People; what can be plainer than that this is to abdicate the Government as King of *England?* A King may kill himself, and not intend it.

To this purpose we have several notable Collections made by others. I shall note a few of them.

Among the Laws of K. *Edward* C. 17. *de Regis Officio*, the Liberties of the People being mention'd, it is said, that the King is constituted for the Preservation of them, which if he do not, *nec nomen Regis in eo constabit*, he doth not retain the Name of a King.

Bracton says *l.* 2. *c.* 24. *Est enim Corona Regis fasere Justitiam & Judicium, pacem tenere, sine quibus consistere potest nec tenere*; i. e. The Crown of the King is to do Justice and Judgment, and to preserve Peace, without which he cannot subsist.

But above all, the Words of K. *James* to his Parliament *March* 21. 1609. are remarkable. 'The King is bound by a 'double Oath to preserve the *Laws*, *tacitly* as being King, and 'expressly by his *Coronation-Oath*: So as every just King is bound 'to observe the *Paction* made with his People by his Laws, 'framing the Government thereunto; and a King *leaves to be* 'King, and degenerates into a *Tyrant* as soon as he leaves off 'to govern by Law, in which case the King's Conscience may 'speak to him, as the poor Woman to *Philip* of *Macedon*, Either govern according to Law, or cease to be King.

Answerable hereunto is the *Civilians* Maxim, *Tyranni in Exercitio decidunt Jure suo Hereditario*; i. e. Tyrants by their Tyranny lose their Hereditary Right of Government; for the Ill of Monarchy is Tyranny; K. *Charles*'s Answ. to 19 Propos.

From what hath been said, it seems plain, that a King by relinquishing the Legal, and usurping an *Arbitrary* or *Tyranni-*

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cal Government, does as effectually *abdicate* the Government as King, as a *Merchant* that turns *Pirate*, abdicates his Trade; or a *Husbandman*, that leaves off his Husbandry, and resolves to cast the fortune of his Life upon robbing on the High-way, *abdicates* his Plough.

Lastly, 'tis so evident in those that give us the sense of the word, that there is a *real* Abdication, as we have considered it in distinction to a *formal*, that no body that will take the pains to examine can doubt it: Not only *Grotius, de Jure Belli & Pac. lib.* 2. *c.* 4. *s.* 4. *Non tantum verbis sed re potest:* but *Calvin* in his *Lexic. Jurisd.* tells us, *Generum abdicat, qui Sponsam repudiat*; he that divorces his Wife, doth abdicate his Son. So *Homo liber qui seipsum vendit, abdicat se statu suo*, saith *Brissonius de verb. sign.* that is, he which sells himself, *abdicates* himself from his former state. And *Rudeus Comment. de Origine Juris, Abdicare se Magistratu est idem quod abire penitus Magistratu.*

1. For the Application of the Word so explained: And to all that had been said to prove the late *King's Abdication* compleat and undeniable, it ought to be remembred, that in the very times of *Popery* here, a submitting to Papal Usurpations and Authority contrary to our *Laws*, was deem'd a *Disinherison of the Crown*. What shall we say of the late King's voluntary, studied and deliberate *invading his own Authority*, and subjecting the whole *Ecclesiastical* State to a forreign Power, to the utter Extirpation of our *Reformed* Constitution, so firmly setled in the *special Laws* of the Land to that purpose? Considering also how this in a little time must inevitably ruin the Civil State, which is intimately interwoven with the Ecclesiastical in their just *Liberties* and true *Religion*; their very Consciences and Lives not being safe from the Snares and Inquisitions, and even Massacres of the most cruel, tyrannical and *barbarous* Religion in the World.

25 Ed. 3. Stat. 6. Præmunire Provisors. Ed. 1. *Letter to the Pope.*

2. This, in conjunction with the late King's Proceedings in civil Matters, needs no Aggravation. The *Crown* of *England* is glorious in a threefold Excellency, the *Legislative, Executive*, and *Military* Power. Now for one of our own Kings to do that industriously, and by many designed deliberate Acts, which is rank *Treason* against the King and Kingdom, which at least hath a tendency to destroy the King, with respect to his *Crown* and Dignity, what is this but to *destroy himself?* For a King to

diveſt himſelf of the *Legiſlative* Power by the uſe of all Artifices of *Fraud* and *Force*, to deſtroy the *fundamental* Priviledges of *Election*, and conſequently the very Being of a *legal Parliament*, his *executive Power*, by refuſing to govern by Law, and ſetting up an *arbitrary tyrannical* Government. Laſtly, his *legal* ſtanding *military* Power; laying aſide the *Militia*, and reſolving to ſtick to an *illegal Army*, what is this but to *relinquiſh* the Government of *England*, to throw away all *Regal Authority*, to violate, break in pieces, and trample upon the Crown; to declare to all the World, he will be *King* no longer; and to abandon the Authority which he had to govern by *Law*, according to the Conſtitution of the Kingdom, his Duty to his People as King, and the ſpecial Bond upon his Soul in his ſolemn *Coronation-Oath?*

3. But at laſt, to crown all, when the Noiſe of the *Prince's* Coming had brought him a little to himſelf, and he begins to feel the danger that his late daring *Pranks* of *Tyranny* had brought him into, he adviſeth with his *wiſe Council* what to do: Should he truſt his People in Parliament? No: Should he truſt his melting *Army?* No: Should he truſt his dreadful *Son in Law?* No. What then? as the *evil Spirit* rent and tore the Body when he was forc'd to leave it, ſo he did all the miſchief he could, (by calling in his Writs for a Parliament, diſmiſſing his Judges, carrying away the Broad Seal, and putting an end to all kind of Government among us, as before) and then leaves us in abſolute Anarchy, and a way of Confuſion, upon a *neceſſity* apprehended (of his own creating) of diſpoſſeſſing us, he flies to his truſty and wel-beloved the *French King*; thus at once delivering his *Perſon*, and in conſequence directly betraying his *Kingdom* into the Power of the only *Friend* he has in the World, but his Kingdoms only *Enemy*.

In a word, to put an end induſtriouſly to all Government at *home*, and as far as in him lay, to deliver himſelf and his Kingdoms into the Power of a *foreign Enemy*, ſeems to be an Abdication with a Witneſs, at leaſt ſo far, as to leave the Throne vacant.

CHAP.

CHAP. VI.

Of Vacancy *and* Interregnum.

BUT it may be ſaid, That if the late King did *abdicate* the Government, and thereby the Throne became void; then we admit an *Interregnum*, contrary to an ancient *Maxim* in our Government: But the *Convention* did declare, that the late King did ſo *abdicate*, and the Throne was vacant; therefore they have altered the *Conſtitution* of our Government.

Anſw. 1. Hereunto I anſwer, firſt, That I for my part know no Law againſt the poſſibility either of a *Vacancy* in the Throne, or an *Interregnum*; I mean, in *extraordinary* caſes, ſuch as ours was; or when the Royal Family may be ſuppoſed to be *extinct*, or all the remaining *Branches* of it are known to have imbibed *Principles* directly againſt the *Intereſt* and Religion of the *Kingdom*, and deſtructive of what ſhould be preſerved. I cannot ſay but the *contrary* Opinion ſeems to conſiſt with ſome *ancient* Tranſactions of our States.

2. For a *Vacancy* in the Throne, we have an expreſs *Precedent* in the ſenſe of the *Parliament* about *Richard* the 2*d*; and if ſo, that will infer ſo much of an *Interregnum* too.

3. I confeſs of later times, the Recognition of the *Parliament* made to K. *James* the firſt, ſeems to exclude both a *Vacancy* and an *Interregnum*, that is, at leaſt when things proceed *ordinarily* and regularly; the words are, *Immediately upon the Deceaſe of the Queen, the Imperial Crown did by inherent Birthright deſcend to you the next Heir of the Blood Royal.*

And this it concerns me to obſerve, as agreeable to the *Hereditarines* of our Monarchy, as before I have declared it.

A Digreſſion.

But before I proceed, I deſire it may be always remembred, and that we ſtill carry this along with us, That tho the Crown be *Hereditable*, yet Government is an *Office* and Service, or Miniſtry to us for good, *Rom.* 13. and that by our *Law* 'tis in the nature of an Office: that it may be loſt three ways; either by *Inſufficiency*, or *Forfeiture*, or *Ceſſion*, called Non-qualification, Abuſer, or Non-uſer: And how far theſe, or any of them, are applicable to the Poſſeſſor of the Crown in *England*, may be conſidered in the enſuing Diſcourſe. At

At preſent we ſhall obſerve, that he that takes an *Office*, tho it be by way of *Inheritance*, takes it with its *Conditions* and Burthens. Indeed, there are Advantages and Profits annex'd to the Office, and ſometimes real Eſtates in Land, which are inſeparable from it, and cannot be loſt while the Officer continues in the Office: And thus it is with our *Crown-Lands*, wherein the *King* hath *rectum dominion* in Right of the Crown; which no Man hath in his Land beſides the King. Yet if the Government be an Office, and theſe *Crown-Lands* be in the *King*, as he is King, and hath that Office, and not *ſimply* in him as ſuch a Perſon; he cannot loſe them any way during his *being* King; but he ſeems to hold in the *nature of a Benefit*, *from and for another*; *i. e.* his Kingdom, he owes Duty for it, tho not *Fealty* for it: And the Statute 37 *Hen.* 8. *cap.* 16. uſeth the word *Fee* of Lands inveſted in the *Crown*.

Vid. Blounts Law dict. Fee.

But leaving this Digreſſion, we muſt return; and there ſeem two *Doubts* depending here, that I muſt a little inſiſt upon, Whether the *Convention* did indeed declare the *Throne vacant*? and whether we are bound to believe that Vacancy to be ſo *abſolute* as to infer an *Interregnum*?

The firſt Doubt touching *Vacancy*, *viz.*

Firſt, Whether the *Convention* did indeed declare the Throne to be *vacant*?

1. If it be plain they did, they did ſo as our *Repreſentatives*, and why ſhould not that ſatisfy us? at leaſt why ſhould we be troubled at it, ſeeing their ſo declaring falleth not into our *Allegiance*, or the ſucceeding exerciſe of the Government; beſides, we are left at *liberty* to enjoy our *private* Thoughts about it; and tho they declared ſo, we are neither required to *declare* it, or to believe it.

2. But in truth (whatever might paſs at the *Conferences* of the Houſes about it) their *Words* that give us their *Act* in *publick*, do not expreſs or formally make any *Declaration*, that the Throne was *vacant*.

Their words are theſe, [*K. James the 2d having abdicated the Government, and the Throne being thereby vacant*] here is indeed a plain *Suppoſition* that it is ſo, but no Declaration. So that if the Throne was not *vacant* by the King's *Abdication*, they do nothing to make it ſo; all the Suppoſitions in the world cannot make that to be that is not. There-

Therefore if that King had really abdicated the Government, and yet there was no *Vacancy*, there was neither any *Interregnum*; but the Descent was *immediate*; and the Succession regular in the present *King and Queen*.

But if the Throne was really void by that King's abdicating, and the *Convention* was not mistaken in their Supposition, as we should not easily imagine, then we are concern'd to consider the second Doubt.

The second Doubt.

Whether we are bound to believe that Vacancy to be so absolute, as necessarily to infer in the meaning of the Convention an utter Interregnum?

Sol. In general my answer is, There is no necessity for such a Belief, nor indeed any reason for it in my apprehension.

The *Convention*, as I observed before, did not declare a *Vacancy* at all, only they suppose it, as the undoubted Consequence and Effect of the *Abdication*; *having abdicated the Government, and the Throne being thereby void.*

Now that the King's *Abdication* did or did not leave the Throne vacant, depends upon the Nature of the things; and are not affected by the *Declaration*; neither can we by our Jealousies or Imagination make things otherwise than they are of themselves, or make the Declaration import another and a stricter sense than it really doth.

For a fuller answer therefore, three things are distinctly to be considered.

1. How far a *Total Abdication* may effect a Vacancy in the Throne.

2. Whether we have reason to think that the *Convention* did suppose a *Vacancy* in any other sense.

3. Consequently whether that sense imply an *Interregnum*.

Quest. 1. How far a *Total Abdication of the Government may (or doth necessarily) effect a Vacancy in the Throne.*

Sol. For the clear answer to this, we must take our Measures from the Nature of our Government, which hath been supposed to be *Hereditary*.

1. Now if the Government be indeed *Hereditary*, though there be a *Vacancy* in the Throne, truly wrought by the *Abdication* of the Government, as the *Convention* supposed, it can-

not

At present we shall observe, that he that takes an *Office*, tho it be by way of *Inheritance*, takes it with its *Conditions* and Burthens. Indeed, there are Advantages and Profits annex'd to the Office, and sometimes real Estates in Land, which are inseparable from it, and cannot be lost while the Officer continues in the Office: And thus it is with our *Crown-Lands*, wherein the *King* hath *rectum dominion* in Right of the Crown; which no Man hath in his Land besides the King. Yet if the Government be an Office, and these *Crown-Lands* be in the *King*, as he is King, and hath that Office, and not *simply* in him as such a Person; he cannot lose them any way during his *being* King; but he seems to hold in the *nature of a Benefit, from and for another*; *i. e.* his Kingdom, he owes Duty for it, tho not *Fealty* for it: And the Statute 37 *Hen.* 8. *cap.* 16. useth the word *Fee* of Lands invested in the *Crown*.

Vid. Blounts Law dict. Fee.

But leaving this Digression, we must return; and there seem two *Doubts* depending here, that I must a little insist upon, Whether the *Convention* did indeed declare the *Throne vacant*? and whether we are bound to believe that Vacancy to be so *absolute* as to infer an *Interregnum*?

The first Doubt touching *Vacancy*, *viz.*

First, Whether the *Convention* did indeed declare the Throne to be *vacant*?

1. If it be plain they did, they did so as our *Representatives*, and why should not that satisfy us? at least why should we be troubled at it, seeing their so declaring falleth not into our *Allegiance*, or the succeeding exercise of the Government; besides, we are left at *liberty* to enjoy our *private* Thoughts about it; and tho they declared so, we are neither required to *declare* it, or to believe it.

2. But in truth (whatever might pass at the *Conferences* of the Houses about it) their *Words* that give us their *Act* in *publick*, do not express or formally make any *Declaration*, that the Throne was *vacant*.

Their words are these, [*K. James the 2d having abdicated the Government, and the Throne being thereby vacant*] here is indeed a plain *Supposition* that it is so, but no Declaration. So that if the Throne was not *vacant* by the King's *Abdication*, they do nothing to make it so; all the Suppositions in the world cannot make that to be that is not. There-

Therefore if that King had really abdicated the Government, and yet there was no *Vacancy*, there was neither any *Interregnum*; but the Deſcent was *immediate*; and the Succeſſion regular in the preſent *King and Queen*.

But if the Throne was really void by that King's abdicating, and the *Convention* was not miſtaken in their Suppoſition, as we ſhould not eaſily imagine, then we are concern'd to conſider the ſecond Doubt.

The ſecond Doubt.

Whether we are bound to believe that Vacancy to be ſo abſolute, as neceſſarily to infer in the meaning of the Convention an utter Interregnum?

Sol. In general my anſwer is, There is no neceſſity for ſuch a Belief, nor indeed any reaſon for it in my apprehenſion.

The *Convention*, as I obſerved before, did not declare a *Vacancy* at all, only they ſuppoſe it, as the undoubted Conſequence and Effect of the *Abdication*; *having abdicated the Government, and the Throne being thereby void.*

Now that the King's *Abdication* did or did not leave the Throne vacant, depends upon the Nature of the things; and are not affected by the *Declaration*; neither can we by our Jealouſies or Imagination make things otherwiſe than they are of themſelves, or make the Declaration import another and a ſtricter ſenſe than it really doth.

For a fuller anſwer therefore, three things are diſtinctly to be conſidered.

1. How far a *Total Abdication* may effect a Vacancy in the Throne.

2. Whether we have reaſon to think that the *Convention* did ſuppoſe a *Vacancy* in any other ſenſe.

3. Conſequently whether that ſenſe imply an *Interregnum*.

Queſt. 1. How far a *Total Abdication of the Government may (or doth neceſſarily) effect a Vacancy in the Throne.*

Sol. For the clear anſwer to this, we muſt take our Meaſures from the Nature of our Government, which hath been ſuppoſed to be *Hereditary*.

1. Now if the Government be indeed *Hereditary*, though there be a *Vacancy* in the Throne, truly wrought by the *Abdication* of the Government, as the *Convention* ſuppoſed, it can-

not

not be reasonably imagined to be an *absolute* and total *Vacancy*, or such in all respects.

2. The Reason of the Consequence seems plain from this, because the *Vacancy* was made by K. *James*, and he could not make it further than he could. He could not prejudice his Heirs, or leave the Throne empty in all respects; for the Statute of K. *James* the First declares, agreeable to all times, *The Imperial Crown by inherent Birth-right, doth immediately descend to the next Heir of the Blood Royal upon the Decease of the Predecessor*. The Royal Family have *Jus ad Rem*, but the next in Blood, if without just Exception, hath *Jus in Re*, and wants nothing but *Livery and Seisin*.

3. This carries a plain *Analogy* with the Interest of others; and if it be a *Priviledg*, cannot be denied to our Princes. The Estate is in the Heir immediately upon the Death of the *Possessor*; and if the Estate be forfeited, 'tis immediately in the next Tenant, though in neither case they may have yet got *Possession*. And we use to say, the Heir to the Crown is King before either the *Coronation* or *Proclamation*; i. e. The Throne upon Demise is instantly fill'd, and there is no Vacancy in that sense.

All Land is Abeyance, or in Fee of some Man. Rule in Law.

4. If the right *Heir* before entry be kept out of Possession, the Estate is not in *Obeyance*, or in *Nubibus*, but, as the Lawyers say, in *Abatement*; the Estate is really in the Heir, though they say the Law favours the intruder, as the lawful Possessor, till the Right of the true Heir is proved, which I have no reason to apply.

5. However, 'tis plain enough that the *Convention* supposed the late King by *Abdication* left the Throne void in some respect; and what that was, must certainly respect *himself*, and not his *Heirs*; he left the Throne void, as to his own *Person*, and as to his *Possession*, and as to his own Right, by relinquishing the Government.

6. Yea, he left it void as to any present *Administration* or Administrator; and therefore it being so void, *ipso facto*, the great Men of the Kingdom first desired the Prince of *Orange* to take upon him the Administration of the Government, till the *Convention* should meet. This he did, and this *Vacancy* was the natural Effect or Consequence of his *Abdication*; but we may not strain the Word to the altering the nature of our Govern-

Government; neither may we imagine a *Papiſt's* Abdication ſhould bar or prejudice his *Proteſtant* Children, or change our *Conſtitution.*

7. I hope I have ſaid nothing in prejudice of any *Limitations* or Conditions of the Crown, either in Law, or from the neceſſary Nature of Government, or by *Act of Parliament*; if according to ſuch Conditions the next in Blood be not qualified, the Throne may be filled by the Right or the next. When the Throne was declared void upon the Depoſition of *Rich.* the 2*d.* his Son was inſtantly admitted; as were before the Sons of *Edw.* 1. and *Ed.* 2. upon their removal.

8. We are told that before the Stat. 25. *Edw.* 3. *de natis ultra mare*, it was a received Maxim, that the next in Blood born beyond the Sea ſhould not be King: and by that of *Eliz.* 23. *c.* 1. Perſons oppoſing the Execution of that *Act*, are thereby diſabled for ever. Yet we ſtill conceive, that the next Heirs after them, (better capacitated, and not guilty or defective as they) might claim the Crown, otherwiſe all other Perſons are under the ſame Penalty, though not at all guilty; and the Penalty is not reſtrained to the Perſon offending, or to the Crime mentioned in the latter; or in the *Incapacity* in the former Inſtance. The Statute of the Queen plainly ſuppoſeth that ſome may claim, which cannot conſiſt with an *Elective* Government; and if the next in Blood are diſabled by Law to claim, it follows, the Right is ſome where elſe, and by Virtue of that Right the Throne is ſo far fill'd, and Poſſeſſion may be claimed.

Edgar was ſet aſide, being neither in Body or Mind fit to govern. Ingulph.

With full conſent in Parliament the Queen of Scots was deſired to be diſabled. Burl. *Letter. And of late the Duke of* York.

Queſt. 2. Whether we have reaſon to think that the *Convention* did ſuppoſe a *Vacancy* in any other ſenſe.

Sol. We may receive full Satisfaction in this, from what hath been ſaid upon the firſt Query.

For what reaſon can we have in *Juſtice* or *Charity* to imagine the *Conſtitution* intended any further *Vacancy*, than was or could be made by the late *King's Abdication?* what reaſon is left us to think that they intended ſuch a *Vacancy* as was inconſiſtent with the nature of our *ancient Hereditary Monarchy*, or the Intereſt of the *Perſons* that are now advanced to the Throne in their own Right? of which we have given account before;

or why ſhould we impoſe a groundleſs and an unreaſonable ſenſe upon the Proceedings of our Superiors, as may foreſtal or prejudice our quiet and due Submiſſion to the Government?

2. For our further Satisfaction, we ought to conſider, firſt the *Perſons* whom they admitted to the *Crown*, namely ſuch as, upon Avoidance, upon their *Inherent Birth-right* might have claimed the Crown. Secondly, The Words of the *Declaration*, by which they were admitted. [*The Throne being thereby vacant, we do reſolve that* William *and* Mary *be, and be declared King and Queen.*] They do not ſay they make them ſo, but reſolve that they are ſo, and then declare them to be what indeed they were.

Noted before.

3. And now I muſt have leave to admire the Wiſdom, Foreſight and Caution of that great *Aſſembly*: they do not lay hold of a *Forfeiture* of K. *James*; they do not pretend to depoſe him; they do not inſiſt upon his *Reſignation*; but they ſuppoſe and alledg ſtrong Grounds of that Suppoſition, that he had abdicated the Government ſo far, as that with reſpect to him, to all Intents and Purpoſes, the Throne was void; and therefore to maintain the *Hereditarines* of this *Monarchy*, they allow the Right of the next Heirs, *viz.* *William* and *Mary*; and accordingly upon that their Title, they declare them King and Queen.

Queſt. 3. *Whether the ſenſe of Vacancy thus explained, imply an Interregnum?* This can be a Queſtion no longer, if we conſider the Premiſes; for ſuch a Vacancy we have upon every Demiſe of the Crown, yet no *Interregnum.*

CHAP. VII.

Of the Convention, *and how it became a* Parliament.

The Third Maxim conſidered.

Obj. WE are arrived to the Conſideration of the third great Exception, *viz.* That it is a *Maxim, that nothing binds the People of* England *but an Act of Parliament*: But the preſent Government was made by a *Convention*, and not by a *legal Parliament*, therefore we are not *bound* to own it.

Sol. 1.

Sol. 1. To this, firſt, it may be replied, That tho this *Maxim* be generally allowed, yet not without ſome *Exceptions*. For is not *Cuſtom* and the *Common Law* the Rule of Right and Juſtice betwixt Man and Man, yea and betwixt the *Prince* and the *People?* Were there no *Statute* or Act of *Parliament* about Government and Subjection? Yea, were there no *Coronation-Oath*, or Oath of *Allegiance*, to be taken by the *King* or the *Subject?* Yet, from the nature of our Government, and by *Common Law*, the King ought to govern according to the Laws and Cuſtoms of the Kingdom; and we ought to *pay* him our natural Allegiance. Yea, it is not queſtioned by thoſe that moſt *ſcruple* about the preſent Settlement, but now there are poſitive Laws, requiring thoſe Oaths, yet before they are taken, the reſpective Duties both of King and People are to be obſerved by force of the radical nature of our Monarchy, and the fundamental *Conſtitution* of Government in our Common Law.

2. For a further Anſwer we muſt remind what hath been ſaid of our *Hereditary* Monarchy, which if underſtood in no other ſenſe, than theſe very Perſons are eager to maintain, methinks ſupercedes this Objection.

For if the Government in their own ſenſe be hereditary; then, in conſequence of it, when the Throne is vacant of the Predeceſſor, it is in the ſame inſtant fill'd by the *next* Heir, as to Right and Title, in Analogy with all other Caſes of Inheritance, and even from the nature of *Inheritance*. We need not here ſpeak over again what we have about the late King's *Abdication*, and leaving the Throne *void*; we may be allow'd here to ſuppoſe it; and then 'tis evident that, upon this ground, upon that avoidance, without any intervention or Act of the People, either in a *Convention*, or *Parliament*, the *Crown immediately* deſcended to the next Heir of the *Royal Family* by Right of Blood, or Birth-right.

3. So far for their Right. As to their Entry and *Poſſeſſion* of the Government, tho in all ſuch extraordinary *Revolutions*) it hath been ſafeſt, to be admitted with the Conſent of the People; yet 'tis evident from the ſame Conceſſion, that it is their Inheritance; that the next Heir may *claim*, and take poſſeſſion of *himſelf*, without the Conſent or Act of the People; that is, he hath right to do ſo; and if he be hindred and kept by force from his lawful Entry, without *juſt* Cauſe, or his *own* Conſent,

he is apparently injured. And this seems to follow irresistibly, from the nature of an Inheritance.

4. Accordingly, the Duke of *Lancaster* came into the *Parliament*, and claimed and *challenged* the Crown as descended unto him, by the *right Line* of the Blood of *Hen.* 3. and his Claim and *Challenge* without any Dispute was immediately *admitted.*

Walsingham Hist. Upon the Resignation of *Edw.* 2. his Son *Edw.* 3. as the *first-born* and Heir of the Kingdom, declares, that upon his Father's Concession by the *Counsel* and Advisement (no other Act) of the great Men, he *assumed* and took upon him the Government.

5. But I need instance in no more, when we have considered what passed in Parliament, 1 *Edw.* 4. They declare the King was in Right, from the Death of the King his Father, very *just King*; and that they take and repute the said *Edw.* 4. according to his said Right and Title, declaring his Title was just and lawful, as grounded upon the Laws of God and Nature; and also upon the ancient Laws, and laudable Customs of the said Realm. Agreeable hereunto was the Recognition of King *James* before-mentioned.

6. Now if we apply this to our own Case, may I demand, What was there left for the Convention to do? King *James* had relinquish'd the Government, and left the Throne *vacant*; thereby there was an *immediate Descent* of the Crown by inherent Birthright to his Daughter, if willing to accept it: I say, what had we to do more, than to recognize and declare her to be *Queen* of *England?* Indeed, they did join in their said Declaration the Prince her Husband with her: but they seem not to pretend to make either him or her, *King* or *Queen*; their words are these, *The Lords Spiritual and Temporal, and the Commons assembled at* Westminster, *do resolve that* William *and* Mary, *Prince and Princess of* Orange, *be, and be declared King and Queen of* England, *&c.*

Object. But why do they not then declare the Princess as immediate Heir, to be *Queen only*, or at least before the *Prince?*

Sol. This I hope hath been fairly accounted for before, *Consensus tollit Errorem*; especially Consent grounded upon invincible Reasons of State in that Juncture, or rather Confusion of Affairs. And if we look back upon former times, we are not without instances in this particular, not much unlike it.

2. *Ed.*

2. *Edward* the 2*d* denied himself of his Right, and actually relinquish'd the Government, ('tis not material here upon what Motives) and his *Son*, with the *Father's* liking, and the Advice of the *great Men*, was King of *England* during his Father's Life; tho before he had sworn, *invito Patre*, he would never accept of the Crown; yet when he doth accept it, he declares he takes it not as the Gift of the People, nor any other way, but as *Primogenitus Regis, & Hæres.*

3. Somewhat like it we read concerning *Richard* Duke of *York*; he was permitted by the *true Heir* to the Crown, (tho his own Title to it was upon examination found defective) to possess the Throne, for the *honour* of the King, and to maintain Peace during his Life: and the true Heir did *cedere de jure suo*, with assurance to enjoy the Crown after the Decease of the King *de facto.*

4. It was indeed enacted 15 *Edw.* 2. that the things which shall be establish'd for the Estate of the *King*, and of the *Realm* and *People*, may *be treated, moved and established by the King, and by the Assent of the Prelates, Earls, Barons, and Commonalty of the Kingdom.* And there is no doubt but this is the proper course in ordinary Cases.

5. But that there is a necessity for a *Convention*, that is no Parliament, in some *extraordinary* Cases, to meddle in these high Matters, none, I think, can question. Namely, if we can suppose the *Royal Family* extinct, at least so far, as there is no *Heir* appears to claim and take the Government, upon the *demise* of the King. Is there not a plain necessity now to preserve all from *Confusion*, for the *great Men*, &c. to meet, and to consider where to place the Government, according to Right or Merit?

6. Again, we may suppose two or more *Rivals* for the Crown, upon the *King's* Death, when there can be no *Parliament*, (that, if in being before, dying with the King) should not the Great Men meet, and prevent the Ruin of the Kingdom by *Civil Wars*, by acknowledging and assisting the right Heir, as they are bound by their *natural* Allegiance? *As they did in* Rich. 3. *that famous Case.*

Yea, I may add, If a *Pretender*, excluded by the Limitations of the Law, should by violence invade the Government; what Remedy, if the People may not meet, especially being invited thereunto, by the next Heir *qualified* by the Law, to keep out the

the *Pretender*, and admit the lawful Heir to take the Government?

7. That there may be *Limitations* put to the Deſcent of the Crown, methinks lies not only in the *Nature* of Government, but hath been the declared ſenſe of the Kingdom, (*i.e.* of *King & Parliament*) upon all occaſions, and never denied: And if thoſe Limitations are neceſſary for the preſervation of the Whole, and our very Conſtitution, as they may be, or are clearly expreſſed in an *Act* of Parliament; if any one would break thrô, and invade the Government, he muſt be prevented by a Convention, or the *Foundation* of the Government is ſubverted.

8. Laſtly, The Throne being left empty of an Adminiſtrator lately in our own Caſe, and we put into a ſtate of Anarchy, and great Confuſion upon the late King's Departure, Did not every Man, that had any ſenſe of our Danger, (and that is, all that were not concern'd in the late methods of our Ruin) Did not they ſee then a plain neceſſity to meet together, and apply to the Author of our Deliverance, deſiring that he would *take upon him the Adminiſtration* of the Government, till the *Convention* ſhould meet, and to give out his *Summons* for a Convention? And was not that Convention regularly, peaceably and freely choſen and aſſembled? And what did they do, but conſider where the *Right* of the Crown now lay, and with the Conſent of all Parties, as before is noted, declare WILLIAM and MARY our *King* and *Queen*.

9. True, as yet they were no *Parliament*, but as ſoon as there was a Poſſeſſor of the Throne, the Lords and Commons ſo freely choſen, by the ſubſequent Conſent of the King, of *Themſelves* proceed into a *Parliament*; and being ſo, recognize the King and Queen, and cauſe *Proclamations* thereof to be made throughout the *Kingdom*. Which being done, we have a King and Queen *de facto*, and no room left to diſpute their Title according to Reaſon.

10. Give me leave to reſume the Matter fair and plain. All ſaw a neceſſity that the great Men ſhould meet, (and ſome perhaps that now ſcruple) and deſire the Prince of *Orange* to take the *Adminiſtration* of the Government, and ſummon a Convention; and in that Exigence what could they do more ſeaſonable and wiſely? and how could the Prince proceed more regularly and nearer to our Conſtitution, having the Exerciſe

of

of the Government, than by ſummoning a Convention? Or, how could the People tranſact the *Election*, to repreſent them more freely and quietly than they did? And what had the *Convention* of *Lords* and *Commons* (ſo elected) to do, but to conſider where the next Title to the Crown lay, and to declare and recognize the preſent King and Queen, with conſent of all parties concern'd, as before was obſerved? by which Act of the People of *England*, they took, and now have, as evident a *Poſſeſſion* of the Throne, as ever any King of *England* had.

11. I ſay, now eſpecially, becauſe, ſince the Declaration of the *Convention*, the Body of the Kingdom in *Parliament*, have ſolemnly again recognized the preſent King and Queen; and they have been ſince acknowledged by the People at large, by Univerſal *Proclamations* throughout the Kingdom.

Obj. But the Aſſembly at *Weſtminſter* may be thought but a *Convention* ſtill, and no *Parliament*, becauſe not at firſt ſummon'd by the *King's Writs*.

Anſw. However, they truly repreſent the whole Body of the People, and the Repreſenters of the Commons, and Univerſity of the People, together with the Lords, all concur'd to the *Proclamations* of the King and Queen, and that's enough certainly to render the *Poſſeſſion* of the Throne by them undoubted; beſides the Solemnities of it at their Coronations, by the uſual Methods, and all Formalities of Law.

But let us conſider this matter a little nearer.

2. I do not ſay a *Parliament* can make it ſelf; but methinks 'tis evident enough, that the Perſons elected by the People on purpoſe to be their *Repreſentatives*, in Conjunction with the *Lords*, whoſe Right it is to ſit in *Parliament*, with the conſent of the King ſufficiently, expreſs'd ſhould have both the matter and form of a *Parliament*: 'tis true we cannot conceive a proper Parliament in *England*, without a *King in Being or Poſſeſſion*; but the Writs before can reaſonably be ſuppoſed to have no further Influence into the being of a *Parliament*, than only for the orderly Proceeding of the *Election*, and ſignifying the King's *Pleaſure* to have a *Parliament*.

To be ſhort; if we find the Name and Power of a Parliament given by the Law to *Conventions*, not choſen by the People; if we find the *Definition* of a Parliament given by a Statute, to agree exactly to the preſent *Parliament*; and laſtly,

if

if we have a *Precedent* in the caſe, why ſhould we doubt whether the preſent be a Legal Parliament?

Firſt, That the Name and Power of *Parliament* hath been formerly given by Law to *Conventions* of the great Men, and the Community of the People, without any Election of the People at all, and conſequently not choſen upon Writs from the King; this the learned Dr. *Brady* labours much to prove in favour of the Crown before (as he ſaith) *Parliaments* were ſettled as now they are. He ſaith *Colloquium & Parliamentum*, Conference and Parliament, were expreſſive one of another; and in thoſe great *Conventions*, ſometimes only the great Men of the Kingdom, as at *Runnemede*, are called a Parliament; ſometimes alſo with them the *Communitas Populi*; but theſe, he ſaith, did not include the common ſort, much leſs imply the iſſuing out of Writs, and thereupon the Peoples electing their Repreſentatives, p. 72. Anſw. to Mr. *Petit*.

Whence I argue, If a *Convention* heretofore (without the *Election* of the People upon *Writs* from the King) had the Name of a *Parliament*, and concurred with the King to make Laws binding upon the People; certainly now a *Convention* freely choſen by Summons from a Perſon that had the *Adminiſtration* of the Government in his hand, and was in the place of the King (though the late King had call'd in his Writs, and left the Kingdom, and that Exigence of Affairs could not poſſibly admit any other Remedy) I ſay, ſuch a Convention, when allowed by the King, doth much rather deſerve the Name, and challenge the Authority of a Parliament.

The Argument receives much ſtrength, if we conſider that now the Election of our Repreſentatives, ſo eſſential to our Parliaments, is the great fundamental Priviledg of the People; and conſequently the King's Writs to that purpoſe, that we may have *frequent* Parliaments, is the Peoples Priviledg alſo; beſides the preſent King cannot be ſuppoſed to ſuffer any thing in his *Prerogative*, who (though in another Capacity) did in effect ſend out ſuch Writs; and ſince he took the Crown, hath allow'd the Election upon his own Summons for a Convention, to ſerve in order to their being a *Parliament*, what can be thought wanting to the making them a *Parliament*? The People have their *Priviledg*, and the King his *Prerogative*: and while we have the Subſtance, 'tis vain to complain of the want

of

of a mere *Formality*, *impoſſible* to be had, to the Unſettlement of a whole Kingdom.

Secondly, The *Definition* of a *Parliament* agrees well enough with our *preſent* Parliament, as we have it in 1 K. *James* the firſt.

A Parliament is, where all the whole Body of the Realm, and every particular Member thereof, either in Perſon, or by Repreſentation (upon their own free Elections) are, by the Laws of this Realm, deemed to be perſonally preſent. Wherein we have two Propoſitions:

1*ſt*. That every particular Subject, either in Perſon (in the Houſe of *Peers*) or by *Repreſentation* in the Houſe of *Commons*, are, by the Laws of this Realm, deemed perſonally preſent in *Parliament*.

2*dly*. That where *the whole of the Realm* are thus, either in Perſon as Peers, or by their Repreſentatives, upon their own free Elections preſent, there is a *Parliament*.

1. So that the *Eſſence* of a *Parliament* ſeems to conſiſt in two things, with reſpect to the two Houſes: The Preſence of the Peers in their own Right; and of the *Repreſentatives* of the People by Virtue of their *Election*, and to be entire, without the Conſideration of any previous Writs from the King.

2. Indeed we cannot well conceive that a *Parliament* properly ſo, can be ſo without a King in being, not for want of Writs to ſummon, but for want of an occaſion, and reaſon of their being, if the King be the Perſon with whom they are to parly, *& caput Principium, & finis Parliamenti*: But ſeeing the Peers of the Realm, and the Repreſentatives of the Commons, upon their own free Elections, are aſſembled, and the King in being, allows, approves, and ratifies their Aſſembly to be a *Parliament* by his *ſubſequent* Aſſent, as King, to that manner of Summons, which he, before he was *actually* King, invited them to; and adviſes with them, and makes uſe of them as his *Parliament*; It is plain to me, that they have the entire *Subſtance* of a lawful Parliament; and that the *King's Writs* in ſuch a caſe are but a *ſeparable Accident*; and that we ſhould look upon our ſelves, and the whole Body of the People, as preſent there, and acting or conſenting to all the Laws made by the King and them.

3. And laſtly, we are not without a plain and direct *Precedent* in the caſe upon King *Charles* the ſecond's happy *Reſtauration* (as

every one obſerves) which is, *in terminis*, made the pattern by this King and Parliament in the late *Act*, declaring themſelves to be a *Parliament*, though it wanted the previous Writs of Summons, which could not be had.

And though 23 of the *Statutes* made by that *Parliament* were afterwards confirm'd, 13 *Car.* 2. *c.* 7. yet the reſt of the Acts made by them have been taken to be of as much force by the Judges, though not ſo confirm'd: And this of the 12 *Car.* 2. 1. is one of them; as all other Laws, made by our Kings, whoſe Titles have been afterwards queſtion'd, (with the Peoples Concurrence) have been ever held valid.

Thus we have the Publique Judgment of two *Kings*, and of the Body of the whole *Kingdom* in two *Parliaments*, that ſuch *Writs* of Summons before-hand, are not neceſſary in all Caſes, and in particular in our Caſe, to the Conſtitution of a true and Legal *Parliament*: And who have moſt reaſon to underſtand, and to judg, and determine ſuch publick and high Points, concerning the Nature of *Parliaments*, the King and Kingdom aſſembled together, or Men of a ſingle and private Capacity? How far our Conſent and Senſe is concern'd in the Determination of thoſe we have choſen, and in ſome ſort truſted with our politick Intereſt; and in whom the Law lately mention'd, ſaith, We are *deemed to be preſent*, I urge not, but it may be worthy to be conſidered.

The Words of the *Parliament*, being about to declare the Right of *Richard* the 3*d.* are theſe, and I think them very pertinent; *The Parliament is of ſuch Authority, and the People of this Land of ſuch a Nature and Diſpoſition, as Experience teacheth, that Manifeſtation or Declaration of any Truth, made by the three Eſtates of this Realm aſſembled in Parliament, and by Authority of the ſame, maketh before all other things, moſt faithful and certain quieting of Mens Minds, and removeth the Occaſion of Doubts and ſeditious Language.* Which God grant.

CHAP.

CHAP. VIII.

Arguing from the Poſſeſſion *of the Crown.*

I Have now finiſhed the greateſt part of my Undertaking; and how I have vindicated the late *Revolution*, and reconciled our preſent State to our ancient Conſtitution, as an *Hereditary Monarchy*, and admitting no *Interregnum*, my Reader will be my Judg. As alſo of what I have ſaid touching *Abdication* and *Vacancy* in the Throne; of the *Convention*, and their juſt and regular Proceedings, in their Invitation of King *William* and Queen *Mary*, to take upon them the Government of theſe Kingdoms; and laſtly, of the Legality of the *preſent Parliament*; and thereby obviated or anſwered the *Objections* made againſt the preſent *Government*. From any, or all of theſe, as I intended, I ſubmit to his ſerious Conſideration and candid Cenſure.

2. But if all that I have hitherto ſaid, fail of my end, in giving full ſatisfaction to ſuch as *ſcruple* the taking the new *Oaths* of Allegiance, to all the Arguments that have been ſo well inlarged upon by others, I ſhall only reſume that, that hath been often inſiſted on, taken from the *Poſſeſſion* of the *preſent King and Queen*, with the eaſy and juſt conſequence of it.

If the Body of the *Kingdom*, as repreſented by the Lords and Commons duly choſen, or ſcattered over the Kingdom by their open, uninterrupted, and general *Recognitions* and *Proclamations*, and their *Coronations*, with all the Methods and Formalities of Law can give, or can own and approve the *Poſſeſſion* of the Throne, and declare and manifeſt *William* and *Mary*, King and Queen (as no body can doubt) they are certainly, and muſt be acknowledged to be our *King* and *Queen de facto*.

Now hence it follows.

1. Then we owe them *Obedience* due by *Law*, for then we are their *Subjects:* And we cannot conceive of *Soveraignty* without *Authority*, nor of *Subjection* without *Obedience*. This the Statute of *Hen.* 7. plainly ſuppoſeth due to the King in *being*; and conſequently, that ſuch an one is not a King in *Name* only, but in *Dignity* and Power. And the Subject may obey him, fight for him, and conſequently take the military Oath, an Oath to be faithful in that higheſt Act of his Service; and doth

aſſoil him from any Crime in ſo doing, in *Reaſon*, *Law* and *Conſcience*.

2. Hereupon the learned Lord *Coke*, and Judg *Hales* affirm without Heſitancy, That a King *de facto*, and not *de jure*, is within the great and ancient *Statute* of *Treaſon*, 25 *Edw.* 3.

3. Now if we enquire why *Treaſon* may, according to *Law*, be committed againſt a King *de facto*? the Reaſon is obvious, namely, becauſe the *Law* looks upon him as really our *King*. As Treaſon, they ſay, cannot be committed againſt a King by *Right only*, and hath not Poſſeſſion, which muſt be upon the like Reaſon, becauſe the Law doth not regard one out of Poſſeſſion, and cannot protect us, or adminiſter Juſtice to us as King of *England*.

4. Hence it ſeems to follow, firſt, If the Subject may be guilty of *Treaſon* againſt the King in being, it implies he owes the Duty that is *contrary* to Treaſon, to the ſame *King*; and what is that but *Fealty* or Fidelity? that is, *a Principle againſt Treaſon*, a faithful and loyal Mind, keeping Treaſon out of its Seat, which we know is not ſo much in our Actions as in the Mind and Imagination. *2dly.* If *Treaſon* cannot be committed againſt the King that is out of Poſſeſſion, as he is not King according to Law; ſo we cannot be thought to owe him our *Allegiance*, that is, *Obedience according to Law*, for he is not King ſo as to *rule* or command us, and then there is wanting the very *Reaſon* of Duty, or of *Fidelity* to that Duty.

5. It may not be unworthy our obſervation, That if any one yet can be ſo weak or blind, as to imagine, that ſince the late King's *Abdication*, the Crown is in *Abatement*, and the *Right* lies ſomewhere elſe; even in that caſe, they ſay, the *Common Law* favours the *Abator*, and looks upon his *Title* to be *good*, until the *Right* of the *Heir* be *proved*, and the Matter of the Title be decided by Law, and conſequently *all Duties*, in the mean time, are to be paid by the Tenants to the *Abator*, as if he had *Right* as well as *Poſſeſſion*. I need not apply it.

6. However there is nothing in the Law of the Land, or the *Word of God*, that *neceſſitates* the Subject to trouble his Conſcience with *Scruples* about the Titles of *Princes*, or beyond the actual Poſſeſſion and *Adminiſtration* of the Government.

1. For the Word of God, that ſuppoſeth Chriſtians to be under the *preſent Powers*; and ſtrictly enjoins them peaceable and

and unſcrupled Submiſſion and Obedience to the *Powers that are*: but this Argument hath been ſufficiently enforc'd by others, even to *Demonſtration*.

2. For the *Law of the Land*; this juſtifies our Obedience to the *preſent Power*, yea requires it, and puniſheth the contrary; and will not endure any Scruples about the *Right*, when the *Poſſeſſion of the Crown* is once ſettled; and terminates all Doubts of that kind in an Act of *Parliament*, which is the *publick* Judgment and Senſe of the Nation.

'Twas ſaid by the Parliament of *Richard* the 3*d*, after they had cleared his *Title*, as grounded upon the *ancient Laws and laudable Cuſtoms of the Realm, according to the Judgment of all ſuch Perſons as were learned in thoſe Laws and Cuſtoms*; they proceed and ſay, 'Yet nevertheleſs, foraſmuch as it is conſidered, 'that the moſt part of the People is not ſufficiently learned in 'the aforeſaid Laws and Cuſtoms, whereby Truth and Right 'in this behalf, of likelihood may be had, and not clearly 'known to all People, and thereupon put in doubt and queſti'on; and over this, how that the Court of Parliament is of 'ſuch Authority, that a Declaration made by the three Eſtates, 'and by the Authority of the ſame, maketh before all other 'things moſt faithful and certain quieting of Mens Minds, and 'removeth the occaſion of Doubts and ſeditious Language; therefore they declare that he was the undoubted King. Dr. Brad. P. 390.

Whence 'tis evident, that the Reaſon of this *Law* ſuppoſeth that the Subjects in general are not capable of underſtanding the *Laws* and *Cuſtoms* upon which the Titles of our *Kings* depend: and that the beſt Satisfaction that the Generality of the People can poſſibly have in thoſe high Matters, is the Senſe, and Judgment, and Determination of the *Kingdom*, by Act and Authority of Parliament, wherein they ſhould acquieſce for the preventing *Sedition*, ſo much as in *Language*.

But to be ſhort here, the *Law* allows a King *de facto* the Name, and Dignity, and Authority, and Defence of a King; And doth it not require our *Duty* according to Law? Was't ever known, the King being acknowledged to have the actual Government, that the Subject was excuſed from *Allegiance*, or an Oath of *Fidelity*, as occaſion required it? Yea, if Obedience according to Law, be acknowledged due to the preſent Government, as it now it ſeems is generally granted, is not the

the Oath of Allegiance at this time required by Law, as well as by the Relation of Subjects, and ſo made a plain part of our Obedience according to Law?

Yet if the King in Poſſeſſion be *really* our King, do not our own Laws return upon us, *requiring Loyalty* and Fealty, forbidding Sedition, and *Scandalum Magnatum*, and all Endeavours to alter the Government? that is, at leaſt by our peaceable and dutiful Carriage to acquieſce in the Work of *Divine* Providence, in our late *Revolution*, and the Acknowledgment of our Subjection due to *William* and *Mary*, who, as we have heard by the Laws of the Land heretofore made, are our undoubted King and Queen, becauſe in poſſeſſion of the Government; their Right alſo is unqueſtionable by *private* Subjects, being a Point determined according to the ancient Laws and laudable Cuſtoms of this Realm; and their *Right* as well as *Poſſeſſion* openly declared by the higheſt Authority of the Kingdom, in *Acts* of the preſent Parliament.

Object. But ſome are apt to ſay, This is to prove that the *Sun ſhines*; who denies that the preſent King and Queen are ſuch *de facto*, or that we *ought* to obey them?

Sol. 1. This is ſo far well. But do we obey them without reſerve for the late King? Do we acknowledg that the *Laws* of the Land oblige us to give them our Obedience? Or do we mean only, that they have the *Name* of Soveraigns, and a *Power* in their Hands to defend themſelves againſt, and to puniſh *Diſturbers* of their Poſſeſſion? If it be ſo, we do not take right Meaſures of their *Authority*, or of our own Duty *according to Law*.

2. For they are really King and Queen, by being in *Poſſeſſion*, and inveſted by the Laws with *Regal Authority* as well as *Power*; otherwiſe they could not be within the purview of the *Statute* of Treaſon.

3. Conſequently all their *Actions* that are *politick*, and for the matter agreable to Law, are as valid, and of as good Authority as the Acts of the moſt *rightful Kings*.

They have Authority, and do effectually execute, and make Laws, while they are in Poſſeſſion, as they do protect us; ſo they adminiſter Juſtice, diſpoſe of Offices, coin Mony, make Peace and War, puniſh all kind of Offences, as well againſt the *Subjects* as the *Government*.

4. And

4. And ſuch Acts of a King *de facto* only, without Right, as concern, and have Influence upon the Kingdom, have ever been allow'd and reputed good and valid, though the Title to the Crown hath been queſtion'd and denied in after-Ages, as we noted before.

5. That very *Parliament* that condemned the Uſurpations of *Hen.* 4, 5, 6. and all Acts that had entailed the Crown, contrary to the courſe of Inheritance, yet add theſe remarkable Words; *Howbeit that all other Acts and Ordinances made in the ſaid Parliament ſince, been good and ſufficient againſt all other Perſons.* Vid. *Dr.* Brady, p. 386.

I would infer hence, that Obedience is due to the preſent King, *&c.* in his *Authority*, by Law acknowledged, as well as *Power*; and therefore not only for *Wrath, but for Conſcience ſake*; Conſcience, I ſay, not of their Title, but of their *Authority*, and our own plain Duty (at leaſt for Conſcience ſake, with reſpect to the *publick Good*) to take the *Oath* of *Allegiance*, which is part of our Obedience, it being required by Law, and therefore our Duty.

Obj. Your arguing ſeems to perſwade us only to *Obedience*, which we do not much ſcruple, in the ſenſe you explicate it. The Swearing to *bear true Allegiance*, is that which troubles us, not knowing well the intended ſenſe or meaning of it.

Sol. The Government hath given us reaſonable Satisfaction in this Particular, though not ſo clear as may be wiſh'd; the very Title of the Oath, even in this new Law, is the Oath of *Allegiance* or *Obedience*: Now if Allegiance in the ſenſe of the Law, as explained by the *Law-makers*, be nothing but Obedience; and Obedience in *England*, is to be meaſured by the Laws; what can Allegiance import more than *Obedience according to Law?* which you ſay you are willing to yield; and why now ſhould you refuſe to add this Sign and Security of ſuch your Obedience, by taking your Oath to do ſo?

2. Moreover, you find the Government inſiſts not upon the Word *Allegiance*, nor intends any ſtrange or obſcure Obligation upon us by it; for in the *Declaration*, they require of *Quakers*, who refuſe to ſwear, they expreſs [Faith and Allegiance] by thoſe plainer Words; *I will be true and faithful to King* William *and Queen* Mary.

3. And

3. And as one lately hath very well obſerved, the *Parliament* have avoided all occaſion of Offence in wording this Oath that might conſiſt with the Security of the Government; for by omitting the aſſertory part of the former, 'tis evident they do not require us by this Oath to aſſert the Title, but to ſecure the Poſſeſſion and Peace of the Crown, in King *William* and Queen *Mary*, by our Obedience according to Law.

Indeed we may perceive in the whole Proceeding of our late wonderful Revolution, ſo much Sweetneſs, Tenderneſs, and Condeſcenſion to the Prejudices that the former ſtate of things might leave in us, (both with reſpect to our late King, and our own Obligations) as if the Government had induſtriouſly ſtudied to avoid all occaſion of Offence, as much as the nature of the Change ſuffer'd to be poſſible.

I have, I think, noted before, that the *Convention* did not depoſe the late King; did not declare the Crown forfeited; did not require him to make a *Reſignation* of it: and tho they juſtly charge him with many intolerable Grievances; yet they did not call the King to an Account for them. Nay, they did not ſo much as declare that the King is accountable; ſo that the Minds of ſuch as boaſt of *exceſſive Loyalty*, have eaſe as to all theſe things, that bear ſo hard a Contradiction to their Principles; and as for our ſelves, we have noted ſome Kindneſs and Condeſcenſion with reſpect to the Oath required; thereby it it is neither required, that we ſhould *abjure* the Title of the late King, nor aſſert the Title of the preſent. God forbid, therefore, that there ſhould be left any Prejudice in us from the hard Proceeding of the Government in either kind: if it ſhould, it is plainly as falſe in its ground, as 'tis like to be evil in its Conſequence, eſpecially if we ſtiffen our *Diſloyalty* with the Continuance of a ſcandalous Impeachment of our Rulers and Legiſlators, for Severity intended againſt the *Church*; and a deſigned Alteration or Change of the ancient Conſtitution of this *Hereditary Monarchy*: the one I hope is as true as the other.

Obj. The Statute of *Hen.* 7. ſo much depended on, was made by a King that had no Title to the Crown himſelf.

Anſw. What then? Doth it follow that the Statute is not of force? Upon that ground we muſt blot out a great part of our *Statute-Book*, which is full of Laws made by ſuch Kings; and the

the beſt of our Laws have no force, if the Obſervation hath any truth, that the worſt Kings made the beſt Laws.

Object. But 'tis a Law miſchievous to the Right of our Kings.

Anſw. It is much this Miſchief hath not been diſcovered by our former Kings or Parliaments; that ſo miſchievous a Law ſhould continue through ſo long a tract of time unrepealed: 'tis confeſs'd, it may be inconvenient, and prejudice the Intereſt of a King *de jure*; but we ought in reaſon to ſet this againſt it, that it is a Law at all times convenient, and ſerving the Eaſe, Quiet and Safety of the Kingdom, for whoſe ſake Kings themſelves are: 'tis hereupon that the Lord *Bacon* tells us, *that the Spirit of this Law was wonderfully pious and noble:* upon this ground, as one ſaith well, *becauſe they who had no hand in the Sin, ſhould bear no ſhare in the Puniſhment.*

And the Lord *Bacon* adds, *That this wanted not Prudence and deep Foreſight; for it did the better take away occaſion for the People to buſy themſelves to pry into the King's Titles; for that however it fell, their Safety was already provided for.* And as the late Author, that cites my Lord *Bacon* for theſe Words, adds very well, *The meaneſt Capacity will not be wanting for a Rule of that Subjection, which every Soul owes to the higher Powers:* but if the Subject ought firſt to ſatisfy himſelf, touching the Right of his Prince (eſpecially in ſuch a time of conteſt as there was many Years betwixt *York* and *Lancaſter*) certainly every Soul could hardly be ſo well ſatisfied, as to be ſubject for Conſcience ſake.

CHAP. VIII.

Whether a King can make Laws, limiting the Crown.

Obj. THough it be acknowledged that a King *de facto* hath Power to make other Laws, *viz.* Laws for Peace and Juſtice, yet it is a Doubt whether a King that hath no right to the Crown, can make Laws for limiting the Succeſſion of the Crown, as is now to be done.

Anſw. It is confeſs'd, that when it was pleaded againſt the Title and Claim of the Duke of *York*, that there were divers *Entails made to the Heirs Males of* Hen. 4. It was anſwered, *There had been none made by any Parliament heretofore as it is ſurmiſed, but only in the ſeventh Year of K.* Henry *the Fourth.*—*But that Act taketh no place againſt him that is right Inheritor*, &c. *Howbeit all other Acts made in the ſaid Parliament ſince, have been and are ſufficient againſt all other Perſons.* Upon this Law, the foreſaid Diſtinction ſeems grounded; but I think very weakly, for theſe Reaſons:

1. Becauſe this very Law mentions *Henry* the Fourth, with the Addition and Title of King, without any Diminution, as appears in the Words cited.

2. The ground upon which that *Entail* was declared *Null*, was not a want of Power in *King* and *Parliament*, to make a Law about the Succeſſion; but as they declare, in the Dukes firſt Anſwer, That no Oath, being the Law of Man, ought to be performed, when *the ſame is againſt the Truth, and the Law of God:* implying, as afterwards they ſpeak out, it was a Law, though of Man, it faileth not for want of Authority, being made by a King *de facto* with his *Parliament*; but the reaſon why it could not oblige, was taken from the matter of it, it diverted the Deſcent and Succeſſion of the Crown, according to *Right of Inheritance.*

3. The Argument that a King *de facto* hath no Power to make Laws to limit the Crown, becauſe he is ſuppoſed to have no Right to the Crown himſelf: I ſay, this ſeems not cogent. 'Tis true, 'tis ſuppoſed he had no Right at firſt, and his Uſurpation cannot be thought to create any juſt Title to the Crown, yet

yet when he hath it, hath not he Right, or rather Authority in Law, by his Poſſeſſion, to *uſe* it? that is, to make Laws. If not, then *all* the Laws he makes, even thoſe for Peace and Juſtice, are void, for want of *Authority*, which this very Law againſt the *Entail* of *Hen.* 4. denies.

I grant, all *poſitive* Laws made by a rightful King, or by an Uſurper, are equally voidable, *i. e.* repealable. But if we ſpeak of ſuch Laws as are void of *themſelves*, it ſeems to me, they muſt be ſo, one of theſe two ways; Either for want of due *Authority* to make Laws; Or, with reſpect to ſomething in the *Matter* of ſuch Laws as is deſtructive of them.

For the firſt way, 'tis granted me, that a King *de facto* only, hath Authority enough to make Laws generally ſpeaking: if his Laws therefore be not of force to limit the *Succeſſion*, 'tis for another reaſon mention'd before, taken from that *ſpecial Matter* of the Right of *Inheritance*, which, it is thought, cannot be infringed by any Law of Man.

Hence 'tis ſtill a doubt with me, whether a King *de facto* hath not an *equal* Power with the moſt *rightful* King to make any Law, even touching the Crown, as any thing elſe.

Suppoſe a King *de facto*, after ſome Conteſts about the *Succeſſion*, ſettle the Crown as it ought to go, Is not ſuch a Law a good Law? Wherein can it fail? neither in *Matter* nor *Authority*. Again, the moſt rightful King, in and by his Law, limits the *Crown*, as it ought not to be; Is that Law a good Law? No Power can make a Law that is *malum in ſe*, to be *bonum*. *As Hen. 8. did.*

I confeſs, I ſee no difference in the *Legiſlative* Power of a King *regnant*, whether with or without Right; eſpecially, ſeeing the *Parliament*, which is the Body of the Kingdom, chooſe the *Matter*, and give *Authority* to the Laws, as well as the *King*.

But this Nicety need not trouble us under their preſent *Majeſties*, whoſe Title to the Crown, I hope, is unqueſtionable as well as their Poſſeſſion of it. Beſides, there is no room for this Objection among all our Scruples about the *Oath* of Allegiance; for, in our private Capacity, we are not to anſwer for Errors in Government. If the *Succeſſion* can be ſuppoſed to be *limited* in any Point amiſs, how can we help it? What's that to our Duty? how are we concerned? The Law doth not re-

quire us to assert or *swear* to the Act of setling the Crown for the future, it requires only our Obedience to our present gracious King and Queen; and we do our Duty, if we look no further.

CHAP. IX.

The Honour of the Church of England, *no just Objection against our taking the new Oath.*

Obj. I Have heard it offer'd by some, that tho it be lawful to submit to the present *Government*, and to take the *new Oath* of *Allegiance*, yet by our doing it, the *Church of England* suffers in her *Honour*, and her *distinguishing Character* of Loyalty.

Sol. I have some Reason to hope, that with several Persons, not perfectly reconciled or satisfied, this is the last Objection that remains unanswered. I shall therefore briefly, with all the Strength I have at present, set my self to remove it, and so conclude.

1. I confess, *Loyalty* hath been reckoned the Character of the Church of *England*, and in a great measure, very *deservedly*: but if we mean such Loyalty as doth distinguish her from *all other* Churches of Christians in the World, it may be an Argument of Singularity, and Reflection upon all other *Protestant* Churches, (as well as *Popish*) Principles and Practices, as some lately have made manifest demonstration. And how *honourable* or laudable that is, I determine not, but it may be considered.

2. I perceive the Movers of this Objection do not say, that 'tis *unlawful* to take the new Oath: and indeed, that is granted in the nature of the Objection; for if the Oath be refused only, because 'tis dishonourable to take it, 'tis supposed to be in *it self lawful*, tho not expedient: And indeed, the Argument would have force enough, if there were not some *heavier* Thing than *Honour* to be put into the other *Scale*.

3. And thus the present Argument is not directly *Matter of Conscience*, but of *Prudence*: For the Matter *in genere*, and in its first Consideration, is granted to be indifferent; and 'tis

to

to be *determined* to be good or evil by the *Addition* of something to it, in our special and secondary Consideration. Now here you lay Honour and *Reputation* in the Scale, and this hath its Weight; but if we put *Necessity* against Honour and Reputation, the Weight of these is inconsiderable; and what is the Consequence? Why, that which we thought was not to be done, because it was *dishonourable*, we see it must be done, because 'tis *necessary*: This is the Law of *Prudence*; and *Expediency* changeth sides; that which was *expedient*, not to be done, for the sake of *Reputation*; 'tis now expedient it should be done, when the *Necessity* of it appears with its *greater* Weight.

4. You already perceive how easily this applies it self to the Case in hand, admitting something of Dishonour may in general, and *prima facie*, attend the Action; for the very granting it to be an indifferent thing in it self, whether I take this Oath or not, plainly determines the Case, and puts an end to the Controversy.

5. For I boldly and peremptorily pronounce, that if it be *indifferent*, it hath such *Additions* and Circumstances, as cannot but make it an *indispensible Duty*, *Rebus sic stantibus*; from the Argument or Ground of *Necessity*, *viz.* both *Precepti & Medii*.

6. First, There is a necessity of the *Precept* or Law that makes it to be our Duty to take this Oath, which is but the *Security* of our Allegiance; 'tis required by the Nature of our Constitution, and immemorial *Custom*, which is our *Common Law*; 'tis required from the Faction betwixt Prince and People, to secure each other by their respective Oaths; 'tis required by virtue of the *Statute* of *Hen.* 7. whereby we are to acknowledg the King regnant, to whom alone we owe *Allegiance*, and must secure it. And lastly, 'Tis expresly required in the *Laws* of our own making by our Representatives in the present Parliament; in and by which Parliament the King and Queen have equally sworn and plighted their Troth to us. Whence Protection and Allegiance are both the natural and legal Results of the Relation betwixt *King* and *Subject*, which very Titles do after a sort import so much. Necessitas Præcepti.

7. Nor is the taking this Oath necessary only by the *Law* of *Nature*, and by the *Common Law* of the Land, and Acts of Parliament, but by the *Law of God*. If we should grant it to be perfectly *indifferent* without it, yet we must grant, that

if

it be determined by the *Word* of *God*, it thereby becomes neceſſary. Now I ſhould think, that to obey the *Powers in Being*, is as clearly commanded by the Law of God in the *Holy Scriptures*, as by any other Law whatſoever: And that we cannot, or do not obey the Powers in *being*, if we refuſe to take the Oath; which, we ſay, is in it ſelf indifferent, when expreſly required by the *Laws* of the Land.

8. I think it is the Senſe, not only of the Church of *England*, but of all good Chriſtians, that the Word of God makes it our Duty to obey the Government in all *indifferent* things made neceſſary by *our own* Laws: And that we are bound to ſuch Obedience, not only for *Wrath*, but *Conſcience ſake*: Conſcience towards God, his Ordinance, and Command: let us not misjudg it for our Honour or Reputation, to change our boaſted *Loyalty* into *Diſobedience*, which is ſcarce to be avoided without *obeying* the Laws of God and Man, and taking the *Oath*.

Neceſſitas Medii.

Secondly, But were there no other Law requiring us to take this Oath, Doth not the *neceſſity* of it, as it is a *Means*, make it our Duty? What if Reputation weigh ſomething with us, doth not the Danger of the *Publick*, continued by our Stiffneſs, weigh more? Do we talk of Honour, when the *Commonwealth* lies at ſtake? Is it comely for a Souldier to be playing with a Feather in his Cap, when *Hannibal is at the Gates?*

1. Pardon me, if *Zeal hath eaten me up*, and I cannot contain: *O Jeruſalem, for my Brethren and Companions Sakes, I will now ſay, Peace be within thee, yea, becauſe of the Houſe of the Lord our God I will ſeek to do thee good.*

2. Who conſiders how much is owing to niceneſs and ſtrangeneſs to the Government, for the *Hazards* and *Blood* of *Ireland* and *Scotland* already? Who weighs the further Conſequences of it both at home and abroad? Where is our *Compaſſion* to our *Proteſtant Brethren*, our Concern for the Reformation, our Charity to the *Kingdom*, our Juſtice to our *Protectors*, our Kindneſs to our Friend, our Gratitude to our *Deliverer* from Popery and Tyranny? Theſe are ſubſtantial and weighty Things; And what are the *Colours* of a pretended Reputation in compariſon of theſe?

3. What do we mean, upon a point of Honour to throw a *Glove* to the Government? Is it reaſonable or fit for us to pro-

voke

voke the *King* to a quarrel, who hath so many Enemies already, and must stake three Kingdoms to our little Reputation? Yea the Interest of the Protestant World too, of which he is made the *Protector?*

4. Is it not Satisfaction enough for you, that you have plaid the Men, and stood it out as long as there was the least hopes of serving the Interest of the late King, and so long vindicated your Loyalty to him? Is is not now become morally impossible he should ever return but by the Assistance of the *French King?* that is, without inslaving us openly to the *Antichristian Powers* (of which he is the Head) under a haughty, cruel, and most *barbarous Conqueror.*

5. Besides, how unaccountable are Principles, that engage a Man against his own, as well as the publick Interest? as if a Man were bound to oppose and fight with himself and all about him: certainly this is a miserable strait, and such as one cannot imagine the wise and good Providence of God should bring us into.

6. By disobeying the Law, and our Distance with the Government, we continue a Breach, at which a common Destruction may enter; then we know we are lost in the common Calamity. If God in Mercy prevent that, and preserve us with wonder, against our own *Averseness*, as he hath done, then there is yet a Breach betwixt the Government and us: If we do not destroy the Publick and our selves that way, yet we may destroy our selves, when we might help it.

'A man may be *Felo de se*, by destroying himself by our *Dr. Donne.*
'Law; and *Fur de se*, by depriving and stealing himself from
'him, to whom his *Service is due*, by the Imperial Law; and
'*Proditor de se*, by the Law of Nature, if he descend from
'the Dignity of Humanity, and submit to the danger which
'he might avoid. *I speak as to wise Men; judg ye what I say.*

7. 'Tis a plain thing I am about to speak, which, if duly pondered, must needs put an end to the whole Controversy; at least I think so; 'Tis this;

None can be ignorant that the late King hath put himself into that condition, that the *French King* is now actually endeavouring to serve himself of him, for the Conquest of these Kingdoms; he hath put himself absolutely into the *Monsieurs* Power; he truckles under him in the *Irish Commissions*; he hath either

either ſold his Dominions to that King, or ſo delivered up his *Intereſt* in them to his Management, that 'tis a piece of Madneſs to imagine but that the *French* will reap the Advantage of any Succeſs God may ſuffer to be obtained againſt us. Perhaps we may think the poor King *James* was forced to it; but I know you will ſay, you had no hand in that force, and you could not help it; and is not the thing *de facto* ſo? Is it any thing to you by what means, or upon what Motives this came to paſs? but it being certainly ſo, you cannot now think but that, ſeeing the State of things is ſuch, your *Allegiance* to King *James* is ceaſed; unleſs you owe it alſo to the King of *France*, which God forbid; for while you continue to *diſcountenance* the Government, you cannot do more to further the Deſigns and Methods of our Ruin.

8. The Apoſtle makes *Expediency* the Rule of our Practice, in things *indifferent*; ſo that ſome things are to be done, or not to be done, becauſe expedient, or not expedient; upon which this Objection is urg'd. Now if it be indifferent in it ſelf to take or refuſe the Oath, I hope what hath been ſaid is enought to ſatisfy us where the Expediency lies. All things are not expedient. Why? Becauſe all things edify not, much more if they ruine and deſtroy. It is ſomething, *Non promovent publicum Eccleſiæ bonum*, If they do not promote the publick Good of the Church; much more *ſi magis deſtruant*, if they tend to its Deſtruction, as Authors gloſs upon the Text.

Oliver's *Uſurpation anſwers not our Caſe.*

9. One would think this Conſideration might fully convince us that our Obligation to the preſent King, *&c.* is widely different from that which lay upon the People during *Oliver's* Uſurpation; they had reaſon to refuſe, or at leaſt to ſuſpend the Recognition of a Tyrant, whoſe Government was *Arbitrary*, and was never owned by the People in a Free Parliament; who never took upon him the name of King, the proper Title of our Soveraign in all our Laws; under whoſe Violence and great Oppreſſion the Kingdom in general groaned for Deliverance in the return of their *rightful King*; and might laudably hazard their Lives and Eſtates, if there was any hopes; the Accompliſhment whereof by the wonderful Providence in its due time was happily effected in the Reſtauration of King *Charles* the ſecond.

But

But what is our caſe now? is it not quite contrary? We do acknowledg we are now reſcued even from Deſtruction as well as Oppreſſion, And what can we look for upon a *new Change* but a Scene of Blood, the Loſs of all our Civil and Eccleſiaſtical Liberties, under *French* and *Papiſh* Slavery? What can we hope for, if the *Lion* bereft of his *Whelps*, thirſting after Revenge, be let looſe upon us? Will not his Rod that ſmarted before, be turned into a *Scorpion*, and the latter end of his Tyranny be worſe than the beginning?

10. Bleſſed be God, there is an *unclean Spirit* ejected, and our *Houſe is ſwept and garniſhed*; Is his Return to be courted, or indeed to be hazarded? If he ſhould re-enter, will he not *peſter* us with more and worſe Devils if poſſible; when in vain and too late, perhaps we may wiſh we had never encouraged or occaſioned our renewed and aggravated Miſery. It highly concerns us to do what we can to prevent it; and I ſee no other way left us to ſhew our Apprehenſion of the danger, but by comforting the King who, under God, hath diſpoſſeſs'd us; and who only, under Heaven, is the viſible Inſtrument of our Preſervation from that *laſt Eſtate* (to uſe our Saviour's Words) *that will be worſe than the firſt*; which I hope we are yet ſenſible was bad enough; and how we can do this, without aſſuring him of our grateful and cheerful Allegiance and Fidelity, by taking the Oath, I cannot ſee, at leaſt I doubt not but enough hath been ſaid to demonſtrate the *Inexpediency* of our continuing to refuſe it, and conſequently upon that Argument; a Neceſſity of taking it; notwithſtanding the Objection of the *Reputation* of the Church of *England* for her ſingular Loyalty.

11. To conclude; I need not mind you, ſince the three Eſtates in *Parliament*, with the Generality both of the Gentry and Clergy throughout the Kingdom, have left you (perhaps three or four in a County, take one County with another) that yet ſtand out; I ſay, I need not mind theſe very few in compariſon, how fitly they took to themſelves the Name of the Church of *England*: or how likely a thing it is for them, by ſcrupling the Oath, to preſerve her Reputation of Loyalty in their own ſenſe. Let the time paſt ſuffice, that they have endeavoured it ſo long as there was any hopes to do it; but now if the caſe be plainly *deſperate*, 'tis time for them, upon

all the Arguments, ſo many worthy Men as have laboured in Print for their Satisfaction, to cry Quarter, and to yield to the prevailing Power; I mean to come in and ſubmit, and give the required Security thereof, by taking the Oath of *Allegiance* to King *WILLIAM* and Queen *MARY*, whom God long preſerve and proſper.

AN APPENDIX.

The Objection from the Word Allegiance *conſidered.*

AFter I had put an end to my former Diſcourſe, I heard of the following Objection.

Object. It is ſaid, that *Allegiance* being the Word in the new, as well as in the Old Oath; it ſeems, it ought to be underſtood in the ſame Latitude and Senſe in both: Then how can we ſafely ſwear *Allegiance* to the preſent King and Queen in the ſame ſenſe, in which we have ſworn Allegiance to the former King, while the former King is alive?

Anſw. I hear this is the Scruple of ſome ingenuous Perſons; for whoſe ſake I ſhall accommodate my Anſwer to their own Principles, as neer as I can: firſt, by ſhewing, that thoſe two Oaths, though both are called Oaths of *Allegiance*, yet they are not of the ſame Latitude in the matter of them. Secondly, that though in a great meaſure, they are admitted to have the ſame ſenſe; and though in that ſenſe in which we have ſworn *Allegiance* to the former King, we are required to ſwear Allegiance to the preſent King and Queen, yet we ſafely and honeſtly do it.

1. For the firſt. It is plain, that the former Oath, though it be called the *Oath of Allegiance*, yet it hath more in the matter

matter of it, than can be imported in the Word *Allegiance*; it hath two manifeſt parts of a different Nature; the firſt acknowledgeth the King's juſt Title to the Crown, as rightful King; and is found in the form of an *Aſſertory Oath.*

The other is as plainly *promiſſory*; *I will bear Faith and true Allegiance*, &c. Now though with reſpect to this *promiſſory* part of the old Oath, we ſhould grant, that by the new Oath we are to ſwear in the ſame words, and in the ſame ſenſe; yet 'tis more than evident, that theſe Words cannot be intended to *aſſert* any thing about the Title of the Crown; and in all likelihood, the *Aſſertory* part of the former Oath was left out on purpoſe in the new, to avoid matter of Scruple or Offence.

Yet 'tis confeſs'd that Argument ſuffers but little in its Strength, if both theſe Oaths agree, or are the *ſame* in any *ſubſtantial* matter, while Men doubt that the former Oath doth *oblige* them to bear *Allegiance* to King *James*, in the ſame ſenſe in which we are required to take the new one. It behoves me therefore now to prove the ſecond thing propoſed, *viz.* That *though Allegiance have the ſame ſenſe and meaning in both, and we have before ſworn it to King* James *in that ſenſe, yet we may ſafely and honeſtly ſwear to bear Faith and true Allegiance to King* William *and Queen* Mary.

Object. The *Objection*, in ſhort is this, If Allegiance ſworn to King *James* be due to him by virtue of our Oath, it cannot be due to King *William* and Queen *Mary* in the ſame ſenſe it is due to King *James.*

Anſw. The Anſwer is as ſhort; for if *Allegiance* be due to King *William* and Queen *Mary*, in the ſame ſenſe that we ſwore to King *James*; then 'tis not due to King *James*, tho we ſo ſwore: For our former Oath cannot oblige us to King *James*, to the injury of King *William* and Queen *Mary*, it would then be a *Bond of Iniquity.*

We ſee the Objection and Anſwer ſtand both upon the ſame ground, namely, That Obedience or Allegiance cannot be due to *two Kings* in the ſame ſenſe at once. Therefore if I prove that Allegiance is due to the preſent King and Queen, it muſt be yielded, that our former Oath to King *James* cannot oblige us to pay ſuch Allegiance to him.

My Argument is this; Allegiance is due to the *Supreme Power in being*, therefore it cannot be due in the ſame ſenſe to any other; becauſe the ſame Allegiance cannot be due to two Kings at once: but King *William*, *&c.* are the Supreme Power in Being.

To this, what can be replied, but either, that King *William* and Queen *Mary* are not the *Supreme Power in Being*, againſt all ſenſe; or, that *Allegiance* is not due to the Supream *Power in being*, againſt all kind of Law, as I ſhall ſhew preſently.

Object. But may it not be ſuppoſed, that there may be a King *de jure*, that is not ſo *de facto*? And is there no *Allegiance* due to ſuch a King, eſpecially if we have ſworn it to him?

Anſw. But was he not King *de facto*, as well as *de jure*, when we ſwore Allegiance to him? Was that Oath ever taken, but to the King, and under that very conſideration, as *actually* our King? We ſuppoſe a King *de jure*, but what's that? He hath Right to be King: And doth not that very thing prove that he is *not* King, as he hath *Right* to be? And conſequently he hath Right to our *Allegiance* no otherwiſe, but as he hath Right to be King, and dependently upon it? that is, *remotely*, and upon the ſuppoſition, that he obtain his Right, and be *actually* King again, as he was when we firſt ſware Allegiance to him.

Here the Rule ſeems to have place; [*Rebus ſic ſtantibus*] we owe Allegiance to the King while he is actually ſo: if he ceaſes to be ſo, we do not owe him that Allegiance that is due to a King in *Poſſeſſion*: if he have a Right to be King, we do not therefore owe him actual Obedience, until he recover and enjoy, or have that Right indeed, upon which depends our Obebedience. Our *Oath* at firſt included that known Condition, *Si res in eodem ſtatu permanſerint.*

Object. But we have ſworn to King *James*, and who can abſolve us? or how can our *Obligation* to him ceaſe, or be diſſolved?

Anſw. The ſtrict Queſtion here, is not, whether that Obligation be *ſuſpended* only, or wholly taken off? that is, Whether there remains no Obligation upon us to King *James*? but whether the *Obligation* be ſuch as prevents or hinders our lawful ſwearing Allegiance to the Powers in being? There is a Duty owing to the preſent Government, which muſt be firſt allowed; and then the ſuppoſed Obligation to the late King, what-

ever

ever it be, must be such as may consist with that Duty.

I need not here mention how many Ways our *Allegiance* to the late King is ceas'd; From the removal of the *Object*, he ceasing to be King; From the Rule of all Allegiance, the present *Laws*; the Reason and End of Government, or the like. 'Tis enough to my present purpose to prove *that Allegiance is due*, and consequently we may lawfully take the *new Oath* to our present *King* and *Queen*. And therefore no consideration of any *former Oath* should make us deny or delay the performance of our Duty to them.

This is the Point I am come to prove, which seems to me very easy to be done, From the Law of *Nature*; the Law of holy *Scripture*; and the Laws of the *Land*.

First, Obedience to our *Parents*, *civil* as well as *natural*, is a *Law of Nature*. Our actual Governours are our *nursing Fathers* and *nursing Mothers*: this is of moral and eternal Reason; and the Obligation thence upon us, is *antecedent* to any Obligation, that we can be supposed to contract by our Oath to any particular Person contrary thereunto; which, as our Law saith, is but of *human Provision*. 1. *Nature.*

Our *Law-Books* ground our *Allegiance* upon the same Reason; *Protectio trahit Subjectionem*: Allegiance is founded in Protection upon moral Arguments of Justice and *Gratitude*. And the Casuist affirms, "Allegiance is intrinsecal, and so essential a "Duty, and as it were, fundamental to the Relation of a Sub- "ject, (*qua talis*) as that the very Name of a Subject doth af- "ter a sort import it. The Consequence is, that Allegiance is not due to one, that hath not Possession, and therefore hath not power to protect us, whatsoever his Right may be; but it is due to the *present King*, *&c.* that doth *in fact* protect us without any Consideration of his Right to the Crown. *Calv. Cast.* *By* Sanderson.

2. *Allegiance* (saith the Bishop again) *is a Duty that every Subject, by the Law of Nature, owes to his Country, and consequently to the supreme Power thereof*; that is, to his *Country* as the *End*, to the *King* as the *Means* of that End. *Case of Eg.* p. 109

Now the End being more noble than the Means, for which the Means hath both its Use and very Being, as such; if that which is ordained to be a means of Preservation of our Country, change its Nature and proper Intention, and becomes a

Means

Lect. 5. de leg. S. 19. Means and Inſtrument of its *Deſtruction*, we cannot, in the Reaſon of things, be bound any longer to uſe it. For, as he ſaith in another place, Whatſoever is done for any End, is ſo far to be done, as it doth ſeem neceſſary and profitable for that End.

Now 'tis not denied, but that the Government in the hands of King *James* was uſed, not for the Preſervation of our Country, but its Deſtruction; and contrary to the Ends of all Government: Yea, ſuch as pretend ſome Allegiance yet due to him, do they not rather *fear* than hope for his *Return* to the Government? which, in all *moral* Aſſurance, they know would be more pernicious to us than it was before he left us.

Beſides, we are now under *Powers* that do actually and happily ſerve the Ends of Government. We muſt hence conclude, that by virtue of our Allegiance due to our *Country*, which is of *firſt* and greater Conſideration, our Allegiance to our late King, as contrary, or inconſiſtent therewith, is diſſolved, and become due to the preſent Government.

3. Further; By the Law of Nature, *Salus Populi* is both the ſupreme and the *firſt* Law in Government, and the Scope and End of all other Laws, and of Government it ſelf. Now how this can be preſerved by our Allegiance to any other but the Government in being, is, I think, unintelligible.

Perhaps ſome are yet to learn, *what that meaneth, I will have Mercy and not Sacrifice*: What Sacrifice? Why, God's own Service: What Mercy? Why, to ſave Life; either of an Ox fallen into a Ditch, or a *ſick Man*. Now what was that Service of God that muſt yield to that Mercy to Man and Beaſt? Was it the Obſervation of the *Sabbath*? And what was that Exod. 31. 13. but, as it were, an *Oath of Allegiance* to God? It is, ſaith God, *a Sign between me and you*; yet this Oath binds not, this Teſtimony is invalid, this Service is no Duty, when it comes in competition with *Charity* or *Mercy* to Man or Beaſt. The Reaſon is, There is a *prior* and eternal Obligation to thoſe moral Duties.

Is not then the *Service of the King*, though ſworn in the Oath of *Allegiance* (that Sign or *Teſtimony* between *King* and *Subject*) is not this diſcharg'd, or diſpenc'd with, when *Salus Populi*, the Preſervation of *three Kingdoms* is concern'd and in danger; and the more by the Colour of our pretended Allegiance?

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I think there is much weight in the words of a late Author: "I can be sure, saith he, of nothing, if I am out in this No-"tion, That no Oath can bind any longer, than the Obligation "thereof is consistent and reconcileable with *Salus Populi*, the "Welfare (the Spiritual and Temporal Welfare of the Peo-"ple) which is the sole *End* of all Government.

And seeing the Safety and Preservation of the Community depends upon the Promise of Allegiance to the supream Governor for the time being; and the Subjects are under a plain necessity, either to hazard or ruine the Publick, or to transfer their Allegiance; they may certainly do it lawfully; yea, are bound to do it by the Law of Laws; *Salus Populi Suprema Lex.*

Secondly, So much briefly for the Law of Nature. Now do not the *Holy Scriptures* warrant the same? Do we find any, either in the old or new Testament, that scrupled or were question'd for their Obedience to the *Powers in being*? I think the present Reverend and Learned Dean of *Sarum*, Dr. *Pearse*, hath a Sermon in print, to prove Submission to Governments, a *Fundamental* of the Christian Religion. I am sure our Saviour, and more largely St. *Paul*, require our Obedience to the Powers that are, without any Consideration of their Title; merely, because of their Authority and Administrations; in which the Apostle expresly founds the Duty of *Subjection* for *Conscience sake*. The Arguments to this purpose, lately urged from *Romans* 13. by several *worthy Authors*, I despair of ever seeing tolerably answered; to whom I refer my Reader: only let us meditate those notable Counsels of God by the Prophet, *Seek the Peace of the City*, (*Babylon*, where the People were Captives to their Tyrannical Enemies) *and pray unto the Lord for it*; *for in the Peace thereof, ye shall have Peace.* Jer. 29. 7. 2. *Scripture.*

Thirdly, Lastly, Is there not sufficient in our own Laws to justify our *Allegiance* to a King *regnant*, without our being satisfied touching his Title? Have we not the Authority of former Ages? Is not our *Statute-Book* a clear Testimony of it? In what time was it ever denied? Who was ever censured or punished for granting it? Are not all such Kings who reign'd without Right, recorded as Kings of *England*, and their Laws 3. *Our Laws.*

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as authentick and obligatory? Is it not evident then, that Allegiance due to a *King regnant* (with right or with none) is agreable to the State and Principles of this Monarchy, and founded in the Uſage and Common Law of *England?*

But that which methinks ſhould put the matter beyond Queſtion, is the known and often mentioned Stat. of 11 *Hen.* 7. 1. grounded, as it ſpeaks the ſenſe of the Nation, upon Reaſon, Law, and good Conſcience. And though the worthy *Author of Conſiderations* and others, have with a great deal of ſtrength, argued hence to ſatisfy the Scruples of our Brethren, and it cannot be expected that I ſhould add any thing very conſiderable; yet I ſhall very briefly obſerve a few things for our purpoſe from it.

1. 'Tis thereby acknowledged, that a King *de facto* hath the Name and Stile of a King of *England.*

2. We are to recognize ſuch a one as our *Soveraign Lord.*

3. That Allegiance is due to ſuch a King from all his Subjects.

4. That by reaſon of the ſame *Allegiance*, they are bound to ſerve him, even in his Wars.

5. That they are never hereafter to be queſtion'd (tho the lawful King ſhould recover his Right) for ſo doing their true Duty and Service of Allegiance, as the Words are.

6. That War made againſt ſuch a King by his Subjects, is Rebellion. All theſe things are plain in the Letter of that Law, which hath continued unrepealed or unqueſtion'd for above two hundred Years; and conſequently ſo long hath been the approved ſenſe of the whole Nation, *That Allegiance and true and faithful Service is due to our ſoveraign Lord for the time being*, whatever his Title be.

Hence it follows, that in the ſenſe of the Law, a King *de jure* only, is not King. The Statute ſaith, the King for the *time being*; and ſeeing we can have but one King, he that hath only right to be King, is no *King in being*, or for the *time being*. Hereupon I ſuppoſe the great Lawyers inform us, that the King *de jure* only is not within the *Purview of the Statute of Treaſon*; is not, as they ſay, *Seignior le Roy.*

Conſequently, if Treaſon cannot be committed againſt a King *de jure*, while he is out of Poſſeſſion, Allegiance cannot be due to him: which is a Duty we owe to the King as our Soveragin

veraign Lord; and none in the Eye of the Law is so, but the King in Possession: thus the formal reason of the Oath of Allegiance to the late King ceasing (if he be no King in Law, because out of Possession) the Obligation of that Oath, with respect to him, ceaseth also, besides much of the matter of our former Oath is gone too, for we were sworn to bear true Allegiance to him in *revealing and preventing Treasons* against him; and now he is not an *Object* capable of *Treason*.

But they also tell us, Treason may be committed against a *King regnant without Right*; and if so, 'tis thence evident that Allegiance is due to him: against which Treason is directly contrary. *Treason* is an Offence against our *natural* Allegiance; which appears from the form of *Endictments*; the words are, *Contra debitum Fidei & Ligeantiæ suæ*, against the Duty of Faith and true Allegiance; so near are they to the very Words in the Oath of *Allegiance*.

In a word, to apply it, Are not *William* and *Mary* now *regnant* and in full Possession of the Government? To deny this, is to impose upon our Senses: Are they not our Soveraigns also, to whom we owe Allegiance? This to question, is against all kind of Law? May we be guilty of Treason against them? Then, *supposed Allegiance* to their Enemy, seems to be a degree towards that Treason, and to be a treasonable Principle, if brought into Act, it tends apparently to the Death of the King and Queen; and how far the very Opinion is from Imagination; and consequently from the Formality of Treason, should be soberly considered, at least to abate our censure of the Government, that with some Severity, requires our Allegiance; and if it may be, to perswade us to timely Conformity therein.

The Sum is, I think we cannot justify our refusing to take the new Oath of Allegiance to King *William* and Queen *Mary*, without destroying Acts of Parliament, changing the Laws of *England*, and razing the Principles and Laws of Nature.

The Words of 11 Hen. 4. c. 1. cap. 1. *bearing to our Purpose, are these:*

" The King our Sovereign Lord, calling to his remembrance the *Duty of Allegiance* of the Subjects of " this his Realm; and that they, by reason of the " same, are bound to serve their Prince, for the time " being, for the defence of him and the Land, against " every *Rebellion, Power* and *Might* reared against him; " —And that 'tis not reasonable, but against all Laws, " Reason and good Conscience; that the said Subjects " —any thing should lose or forfeit, for doing their " *true Duty and Service of Allegiance*—It be therefore " ordained, that from henceforth no Persons that attend upon the King and *Soveraign Lord* of this " Land for the time being, in his Person, and do him " *true and faithful Service of Allegiance*, be in no wise " convict, &c.

POST-

POSTSCRIPT.

IF in the foregoing Discourse I have abused the Law in *Terms* or otherwise (as 'tis not unlikely, being out of my way) I beg pardon of the Learned in that Faculty. I have nothing to plead in Excuse but an honest Intention.

FINIS.

ERRATA.

Page 58. for Chap. VIII. read Chap. IX.
Page 60. for Chap. IX. read Chap. X.

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